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ORIGINAL

GUAM LAND USE COMMISSION REGULAR MEETING MINUTES



Department of Land Management Conference Room ITC Building, Tamuning



Thursday, June 22, 2017 1:42 p.m. to 4:32 p.m.

GUAM LAND USE COMMISSION

Regular Meeting Thursday, June 22, 2017

Department of Land Management Conference Room 3rd Floor ITC Building, Tamuning

MEMBERS PRESENT:

Mr. John Z. Arroyo, Chairman

Mr. Victor F. Cruz, Vice Chairman

Ms. Conchita D. Bathan, Commissioner

Mr. Tae S. Oh, Commissioner

Mr. Hardy T.I. Vy, Commissioner

Mr. Michael Borja, Executive Secretary

Absent: Mr. Nicolas Toft, Legal Counsel

PLANNING STAFF PRESENT:

Mr. Marvin Aguilar, Guam Chief Planner

Ms. Celine Cruz, Case Planner

Ms. Cristina Gutierrez, Recording Secretary

GUAM LAND USE COMMISSION GUAM SEASHORE PROTECTION COMMISSION Attendance Sheet

Department of Land Management Conference Room 590 S. Marine Corps Drive, Third Floor, ITC Building, Tamuning

Date of Meeting:	Thursday, June 22, 2017	X GLUC X Regular	GSPC Regular
Time of Meeting:	GLUC: 1:42pm GSPC:	Special	Special
		✓ Quorum No-Quorum	Quorum No-Quorum
COMMISSION ME	MBERS	SIGNATURE	
Chairman John Z.	Arroyo		
Vice Chairman Vic	tor F. Cruz	- Com	
Commissioner Co	nchita D. Bathan	Mate	
Commissioner Tae	s. Oh ${\cal V}$	B	
Commissioner Ha	rdy T.I. Vy	14	
STAFF		0	
Michael J.B. Borja	, Executive Secretary	welges.	
Nicolas E. Toft, Le	gal Counsel (OAG)	Excused	
Marvin Q. Aguilar,	Chief Planner	reques-	
Frank Taitano, Pla	nner IV		
Penmer Gulac, Pla	nner IV	- A	
Celine Cruz, Plann	er IV	WWM/	
M. Cristina Gutierr	ez, WPS II	Martiner	
ADJOURNMENT:	GLUC: 4:32m GSPC:		

GUAM LAND USE COMMISSION GUAM SEASHORE PROTECTION COMMISSION

Public Attendance Record

Location: Department of Land Management Conference Room 590 S. Marine Corps Drive, Third Floor, ITC Building, Tamuning

X	GLUC	X	Regular	Date:	Thursday, June 22, 2017
X	GSPC		Special	Time:	1:42 pm
V	Quorum		No Quorum	Adjournment:	4:37/201

PLEASE PRINT NAME CLEARLY	APPLICATION NAME AND/OR NUMBER	Telephone No.
CAROL BAMOS	NA	971-9907
(Sana rizonar	Darie	9290704
Siame Strong	Save Southern Conan	/
ROY KERR	Gove Goutura Courant	182.8409
Joni Kerr	Save Southern Guam	797-1477
ABOUTO G. BAYL		888-2666
Coutry Lintrates	Rezone 100 Ff	788-3866
Edwin Livitrates	Rezone 100 ft	788-3866
-WELL HAPIRA	DOCOMO PACIFIC	689 2707
Laria Casil	SAVE SULTHERN GUAM	
Lava DEaki	Glimpses Publication?	480-4570
VOJEPH M. BORJA	OFFICE OF SEN TOM ADA	473-3301
Rick Salog	10 a 11 10 11	4733301
Edwind La	Public	688-5722
PHH SHELLING	AES /NC	649-6321
Rodney Webb	Concerned Citizen	488-7738
GLUC Form 21 - GLUC Public Attendance	Record Form - APRIL 2010	

GUAM LAND USE COMMISSION GUAM SEASHORE PROTECTION COMMISSION

Speaker's Sign-In Record

Location: Department of Land Management Conference Room 590 S. Marine Corps Drive, Third Floor, ITC Building, Tamuning

X	GLUC	X Regular	Date: Thur	sday, June 22,	2017
*	GSPC	Special	Time:	1:427	(קרל
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GLUC Form 20 - GLUC Speaker Log Record Form - APRIL 2010

GUAM LAND USE COMMISSION



Chairman John Z. Arroyo Vice Chairman Victor F. Cruz Commissioner Conchita D. Bathan

Commissioner Tae S. Oh Commissioner Hardy T.I. Vy

Michael J.B. Borja, Executive Secretary Nicolas E. Toft, Legal Counsel (OAG)

AGENDA

Regular Meeting Thursday, June 22, 2017, 2017 at 1:30 p.m.

Department of Land Management Conference Room 590 S. Marine Corps Drive, 3rd Floor, ITC Building, Tamuning [As advertised in the Guam Daily Post on June 15, 2017 and June 20, 2017

I. Notatio	n of Attendance	[] Quorum	[] No Quorum
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- II. Approval of Minutes
 - GLUC Regular Meeting of Thursday, May 25, 2017
- III. Old or Unfinished Business

Status Report/Order to Show Cause

- A. Guam Wanfang Construction Ltd; six-month status report and continuation of an Order to Show Cause on the conditions of approval for a previously approved Height Variance for the proposed Pago Bay Marine Resort, in the Municipality of Yona, Application No. 2015-29B. [Continuation from GLUC Meeting of May 25, 2017]
- IV. New Business

Zone Variance

- B. The Applicant, Docomo Pacific, Inc.; request for a zone variance for height for a permitted 100-foot telecommunication monopole tower on Lot No. 34, Tract 542, in an "A" (Agricultural) zone, in the Municipality of Dededo, under Application No. 2016-23. Case Planner: Celine Cruz
- V. Administrative & Miscellaneous Matters
- VI. Adjournment

GUAM LAND USE COMMISSION REGULAR MEETING MINTUES Department of Land Management Conference Room, 3rd Floor ITC Bidg., Tamuning Thursday, June 22, 2017 • 1:42 p.m. to 4:32 p.m.

I. Attendance

Chairman Arroyo called the regular meeting of the Guam Land Use Commission for Thursday, June 22, 2016 to order at 1:42 p.m., noting a quorum.

Present were: Chairman John Arroyo, Vice Chairman Victor Cruz, Commissioner Conchita Bathan, , Commissioner Tae Oh, Commissioner Hardy Vy, Executive Secretary Michael Borja, Guam Chief Planner Marvin Aguilar, Planning Staff Celine Cruz and Recording Secretary Cristina Gutierrez

Excused: Legal Counsel Nick Toft

Prior to commencing with today's agenda, Chairman Arroyo asked Commissioners if they would like to make changes to the order of business. Vice Chairman Cruz suggested that Item IV – New Business be heard first, followed by Item III – Old/Unfinished Business. [There were no objections from Commissioners]

II. Approval of Minutes

<u>Chairman Arroyo</u> you have before you the Minutes from the last meeting of May 25, 2017. You've all had an opportunity to look at that; I will entertain a motion.

Vice Chairman Cruz motion to approve the Minutes of Thursday, May 25, 2017.

Commissioner Bathan second.

<u>Chairman Arroyo</u> motion on the floor made by Vice Chairman Cruz, seconded by Commissioner Bathan. Any discussion? [None noted]

On the motion, all in favor say "aye" [Chairman Arroyo, Vice Chairman Cruz, Commissioners Bathan and Oh], all opposed say "nay." [Motion passed unanimously; 4 ayes, 0 nay] [Minutes of May 25, 2017 approved; no edits and/or corrections received.]

IV. New Business

Zone Variance

B. The Applicant, Docomo Pacific, Inc.; request for a Zone Variance for height for a permitted 100-foot telecommunication monopole tower, on Lot 34, Tract 542, in an "A" (Rural) zone, in the Municipality of Dededo, under Application No. 2016-23. Case Planner: Celine Cruz

<u>Celine Cruz</u> reads the staff report to include purpose, facts and chronological facts of the application; public hearing results, staff analysis/discussion, recommendation and conditions. [For full content/context, refer to attachment.]

[Attachment B - Staff Report dated June 16, 2017]

Chairman Arroyo any questions?

Michael Borja (Executive Secretary) when was this tower erected?

Celine Cruz the applicant received a building permit on August 13, 2014.

Michael Borja so it was already erected prior to the rescinding of the Executive order 2001-36.

Celine Cruz yes.

Michael Borja is this the last one?

Celine Cruz I believe there is a Santa Rita site

Marvin Aguilar (Chief Planner) Santa Rita and Talofofo site.

Michael Borja two more? Are they erected?

<u>Diana Guzman (Docomo)</u> no sir; there is a correction, there are a total of five (5) more based on the old executive order; and yes, they are erected.

<u>Celine Cruz</u> I just saw foundation for the Santa Rita which is my application, but I'm not sure about the other sites.

Chairman Arroyo any other questions?

<u>Commissioner Oh</u> just to be sure, to clear it up. The executive order allows telecommunication companies to install towers prior to going through the zone variance process.

Marvin Aquilar yes.

<u>Commissioner Oh</u> my understanding is that that executive order has recently been rescinded. [Ms. Cruz responds "yes."] But, because this application this building permit was submitted prior to that ...

Marvin Aguilar it fell under the old executive order requirements.

<u>Chairman Arroyo</u> the comment on having to refer anything that has to do with emissions, frequency, safety, liability to the FCC. Can you expound on that a little bit.

Marvin Aquilar that came out of the 2001-36 executive order where we, as the government, has to refrain from assessing any telecommunication structure based on possible health hazards. It strictly defers that the FCC respond to that. What happens is that the telecommunication companies follow the requirements of FCC requirements.

[**Federal Communications Commission hereinafter referred to as FCC**]

<u>Chairman Arroyo</u> if they meet the requirements, I guess what it's saying is that we can't place any other conditions to require them to meet more than the minimum requirements because this is a federal regulation?

<u>Marvin Aguilar</u> correct. Or for that matter, to even entertain the issues of potential health hazards.

Chairman Arroyo because this is all federally regulated.

<u>Marvin Aguilar</u> the executive order was crafted so that they can expedite all these structures to increase the communication capacity throughout the island.

<u>Chairman Arroyo</u> there was several concerns at the public hearing regarding those issues. How were those addressed?

<u>Celine Cruz</u> basically the concerns that we had to defer to the executive order and the GLUC Resolution. The concern that the tower was constructed prior to a variance application being accepted by the department. And it was probably even up and running even before the public had an opportunity to say anything or express their concerns. Some of the other things that came into play, again, were the health concerns which again we had to defer to the executive order allowing for it.

<u>Marvin Aquilar</u> we are restricted to assessing such structures based on the integrity, the structural integrity of the structure; if they were built right, following appropriate building requirements, where it is going to be located. The bottom line is that when it comes to us we are looking at a tower structure and making sure that it is vetted through the appropriate agencies before it goes to the Guam Land Use Commission.

<u>Chairman Arroyo</u> regarding the questions of safety and things like that did the applicant respond to any of those comments or questions?

<u>Celine Cruz</u> they did. They provided informational packets to the public. And again, they assured them that ... in particular that that site was already registered with the FCC and that they were meeting the requirements of the FCC as part of their due diligence in erecting the tower and operating it at that location.

Chairman Arroyo any other questions?

<u>Commissioner Bathan</u> in your report you mention something about third party assurances.

Celine Cruz it was generally asked for by those in attendance at the public hearing. But, I don't know if Docomo was able ... they did not bring anybody. I believe what they were asking for was like some kind of doctor who has done extensive studies. Docomo did refer them to some websites, and their own website has links to some studies on RF signals. And they also stated that they are emitting at the allowable frequencies allowed by the FCC, and they keep track of those things.

Chairman Arroyo any other questions?

<u>Commissioner Oh</u> just to be clear; under the old executive order, telecommunication companies were allowed to erect and operate without a variance?

<u>Marvin Aguilar</u> yes. You are securing a building permit to construct the tower. I guess the question is do you receive an occupancy permit after getting a building permit. I don't think they issue an occupancy permit for these structures.

<u>Commissioner Oh</u> erection of the structure is reasonable, but operation meaning they are able to switch it on.

<u>Vice Chairman Cruz</u>! guess on that matter when they come up the question is once they put up the tower and they put this thing, do you they get an okay from the FCC that everything is okay and operating. I guess that's more like the occupancy that you're talking about.

Marvin Aquilar yes.

Chairman Arroyo any other questions? Hardy (Commissioner Vy) ---

Commissioner Vy I'm sorry. I have to apologize for being late number one; but at the same time, I was dealing with some urgent matters. I am kind of involved with the contractor on this project. I have no interest, but I work with them doing this project. I just want that to be known, and I am not sure if that is a conflict of interest. I just wanted to get an opinion if I should recuse myself.

Chairman Arroyo are you receiving any kind of benefit?

Commissioner Vy yes, I am; salary.

<u>Chairman Arroyo</u> yes, you probably might want recuse yourself. For the record, Commissioner Vy is recused from hearing this application.

Any other questions? [None noted] If you could please state your name for the record.

<u>Diane Guzman</u> I am with the Docomo Pacific with the Engineering and Contracts Department. I am the Site/Lease Coordinator. I am the individual that is in charge of putting this packet together, and making sure that all requirements are met and submitted to the different agencies that are involved for the building of these monopoles.

Today, I have here my partner, Mr. Jowell Lapira who is the Engineering/Infrastructure Manager. And also, he is the one that provides all the information on the technical part such as the radio frequency, the construction of the tower and all that other information.

Today, we are here to get your permission to seek approval. I understand that we provided all the requirements. And with what Celine and Marvin had just mentioned earlier regarding the radio frequency, the health hazards; we at Docomo feel that we have met all requirements and have no...we are just here to acquire the approval and to see if there are any concerns that need to be answered.

Chairman Arroyo questions?

<u>Commissioner Oh</u> I guess going back to the question I had earlier which was what is the process from completion of construction until operation.

<u>Jowell Lapira</u> as soon as we acquire the building permit for the construction of the foundation and erection of the tower, and once the contractor complies with our standards, then we will start building the telecom part. So, that means those are the base stations and then antennas. With regards to the frequency, we already got approval from FCC to broadcast. So, as soon as we complete all the installation we are going to bring the site on air.

Commissioner Oh who does the inspection for you guys before you turn everything on.

Jowell Lapira it's just in-house for the wireless part.

<u>Commissioner Oh</u> before it gets installed I am assuming that FCC gives you approval for the frequencies.

Jowell Lapira yes; you can find it on their website.

<u>Michael Borja</u> is an occupancy permit required prior to activation of your tower.

<u>Diane Guzman</u> based on my past projects; I have inquired with DPW, and they stated that there is no need for an occupancy permit because no one will be living there.

<u>Michael Boria</u> okay, but you jumped a step before you got the building permit by not being required to get a variance before your building permit. Did you not think that maybe you should get your variance before you activated to complete that section of it or not?

<u>Diane Guzman</u> well, based on what the requirements are with this site it was again under the old executive order. So, it was go and get your permit, go construct your tower, come back and apply for a variance.

<u>Michael Borja</u> you recall coming before the Commission not too long ago to ask for a variance request for a Barrigada site.

<u>Diane Guzman</u> not for the Barrigada. I only recall for the new ones that we had submitted which is for Talofofo and YSengSong.

Michael Borja do you know what caused the rescinding of E.O. 2001-36?

Diane Guzman I believe sir it is because of our installation at the Barrigada site.

Michael Borja exactly; which you were going through the process then get a variance.

Diane Guzman yes, correct.

Michael Borja has that variance been requested already.

<u>Diane Guzman</u> it has been, and there is a closure to that site already.

<u>Michael Borja</u> so, the question I was asking the staff was how many more of these do you have in the pipeline waiting to come to us.

<u>Diane Guzman</u> based on the old Executive order, again sir, it is a total of five (5). Based on the new executive order we have submitted two (2).

Michael Borja what is the status on those five pending.

Diane Guzman the status on the five pending is scheduling of public hearings.

Michael Borja so, they've already been erected and activated.

Diane Guzman correct sir.

<u>Michael Borja</u> the reason that the executive order was rescinded and the reason a Bill was introduced in the Legislature was because of these acts where you have residents who are quite surprised with the erection in their neighborhood and sometimes right next door. What I am trying to get at is that as a business entity do you not have any empathy or even sympathy for the residents in knowing they were upset vocally; in the first one it caused the rescinding of the Executive order, an introduction of a Bill, that maybe perhaps you could have just re-thought the process?

<u>Diane Guzman</u> we did inquire with Land Management, with DPW with regards to the executive order ---

Michael Borja well, technically you are doing everything correctly. But, being community minded....

<u>Diane Guzman</u> with Docomo our intentions are all good. We want to provide quality service to the community and to the island as well. With modern technology, cellphones, everyone uses a cellphone, everyone uses tablets, computers, and we want to be able to provide to the island as a community, and our intentions are all good. That is why we continue to provide this to the island.

Michael Borja but I mean the process. While you are technically correct, don't you think that there might be some ethical concerns within your organization to consider the possibility that maybe you should before activation or even before proceeding ... I can only imagine there was probably a rush to erect in lieu of what's already been going on. I am only expressing probably sentiments that were part of the testimonies that were presented.

That is a concern because you are going to come to us five more times, and there is going to be five more public hearings; you're probably going to hear the same kinds of comments from all those residents in those other places. I don't disagree that what you are providing is a greater service. In some cases, this one specifically, there is a huge abundance of people that are residing in this area and this coverage is going to give them from one bar to five bars.

The point here is that I think you're the only ones coming to us right now with these applications after the fact. Even though it is technically good, we do on this end get the brunt of what happens as a result of it. The legislation that comes up ... I don't think in the last public hearing I saw you guys there or maybe you submitted some testimony, but [Ms. Guzman commented that their Legal Counsel submitted written testimony] Right, but you are not there to face the questions okay, I am. What I have to talk about would be the technicalities as well. I can't affect your business policies, but it does have an effect on the community. Thank you Mr. Chairman.

Chairman Arroyo any other questions.

<u>Commissioner Oh</u> maybe not a question, but just a comment. Considering the fact that you guys do have five more applications in the pipeline, it would probably be a good idea to engage the neighbors and let them know that these are coming up and that it was under the old executive order; probably good idea to engage them and just have to have a discussion with the neighbors.

Diane Guzman those sites, the towers have already been erected.

<u>Commissioner Oh</u> have you tried to engage the neighbors to let them know and appease their concerns when it comes to health hazards. I am not really familiar as to how bad the health concerns are, but I would like to be educated on it also; to have someone here on the technical side. Maybe you can give a brief discussion or some information on the health hazards.

<u>Jowell Lapira</u> with regards to the health hazards. A basic example is, if you compare our system, because it is microwave frequencies right, so the lowest frequency that we are transmitting is the 700 megahertz and up to 2100. If you compare it to a household microwave oven, microwave oven operates from probably like 1700 to 2100. But, the difference with the microwave oven to our base stations is that the microwave operates at a higher-level wattage and compared to us it is very minimal. The right figure for it ... a typical base station can transmit up to 40 watts at our site and if you compare it to a microwave it's like 1000 to 1500. So, the health hazard compared, even with a microwave, in order to have an effect to a human it has to be at that level.

We are trying to put up as much as possible more sites so that we can minimize the transmit power of our base station. Because the further the site from the subscriber, the more power it needs to transmit on both sides on the user side and then the base station.

[Mr. Lapira continues with a lengthy explanation on potential health hazards.]

<u>Chairman Arroyo</u> questions? [None from the Commissioners] How many of these towers do you have erected?

<u>Diane Guzman</u> there are total of seven, to include the Santa Rita site which was our last tower application under the old executive order.

Chairman Arroyo and that includes the five

<u>Diane Guzman</u> all together with the five; aside from the other two under the new executive order.

Chairman Arroyo are all of them operational?

<u>Diane Guzman</u> six, the seventh one which is the Santa Rita is still under construction.

Chairman Arroyo when did you build the first tower?

Diane Guzman the first tower was in Barrigada.

Chairman Arroyo how long ago was that?

Diane Guzman 2014.

<u>Chairman Arroyo</u> what was the technology prior to that? What did you have in place prior to that to transmit and receive ...

Jowell Lapira we had the third generation and the second generation mobile at that time.

<u>Chairman Arroyo</u> how did the signal get transmitted and received? Were there antennas as well?

Jowell Lapira yes, there are antennas on the top part of the monopole.

Chairman Arroyo where they transmitting at greater wattage or less wattage?

<u>Jowell Lapira</u> no, they are all set at 40-watts. And that 40 watts is coming directly from the port of the base station. And once it goes to the transmission and then going up 100-feet higher, so it will have attenuation. Once we have a maximum of 3DB attenuation that means 3DB is already slashing half of the transmit power. The base station itself transmits 40 watts, but as soon as it radiates out of the antenna it will only be half which is 20 watts.

Chairman Arroyo at what level of wattage does it become hazardous to humans.

<u>Jowell Lapira</u> if it is regards to microwave frequencies, if it goes up to 1000 watts that is dangerous.

<u>Chairman Arroyo</u> but at what point does it get from being safe to hazardous. Is it 1000 or less than a 1000?

<u>Jowell Lapira</u> it should be minimal. It depends on the distance of the human from the transmitting antenna.

<u>Chairman Arroyo</u> are there any average....

<u>Jowell Lapira</u> that is why the FCC limits the transmit power for certain equipment; let's say if it is a microwave radio which is used for the transport, they limit it up to like a watt. Because the higher the frequency the more it can be hazardous.

Chairman Arroyo you are limited to a watt.

<u>Jowell Lapira</u> the lower the frequency the more it goes higher, high power. Ours is within 700 megahertz to 2100, the maximum is only 40 watts.

Chairman Arroyo prior technology was also 40 watts.

Jowell Lapira yes.

Chairman Arroyo how long had you been using the older technology.

<u>Jowell Lapira</u> we started using the older technology; the second generation started like in 2000.

Chairman Arroyo and prior to that? What did you use prior to 2000?

Jowell Lapira the old technology which was called the CDMA.

<u>Chairman Arroyo</u> and that was a whole different thing? [Mr. Lapira responds "yes."] So, from 2000 on you have been transmitting these towers at about 40 watts. [Mr. Lapira, "yes."] And in that span of time have you or are you aware of any instances where anybody has been harmed because of that? Anybody has gone to the hospital?

<u>Jowell Lapira</u> I have been working in this business since 1996, and I was working as a microwave technician. So, I am testing microwave radios inside the lab. So, they said if you get exposed to microwave, like daily exposure, you are going to have infertility issues; but, I was still able to have three children. (Laughter)

[Discussion ensues]

<u>Michael Borja</u> in your job or any of the tower operators' jobs, are they required to wear any kind of device to monitor the radiation levels that they are receiving?

<u>Jowell Lapira</u> yes; we have contractors that use power level meters. When we are doing maintenance, we shut down for health concerns of our workers. Because it is not good to be too close to the antenna, especially in front of the antenna.

[Discussion ensues]

<u>Michael Boria</u> is there a cone of silence around the towers? Where the transmission is silenced down at the base of it because it's transmitting outward?

Jowell Lapira that is why the placement of the antennas is usually put overhead.

[Discussion ensues on radiating of transmit power]

Commissioner Oh Diane, the five additional sites can you pin point the locations.

<u>Diane Guzman</u> pending are Mataguac, Chalan Rosita (Yigo), Santa Rita (Lighthouse Baptist Church in Sumay), Piga Site (which is this application), Barrigada. (sic)

Commissioner Bathan are all those sites in residential area?

<u>Diane Guzman</u> except for Santa Rita; Santa Rita is between the Lighthouse Baptist Church and the Sumay Payless.

<u>Commissioner Bathan</u> I think because it is in the residential area you will have the same concerns that you had with this site, and I recommend that you educate the residents so that they will have peace of mind and will not be so concerned about the health hazards.

<u>Diane Guzman</u> yes, we do. We provide documentation and copies of the different antennas that we utilize and we provide all this information to them and also available on our website as well.

<u>Commissioner Bathan</u> do you think the information that you provided would reach the common people. Because what you guys are providing is technical, and probably they will not

understand it being lay people. I think that when your team explains it it should be something that can be understood.

<u>Diane Guzman</u> we do share with the constituents when we have the public hearings that they can contact our office; I also had our Chief Legal draft up a letter and that is something we also provide to the community on any concerns.

<u>Commissioner Oh</u> Mr. Chair, I would like to inform you guys that ... I was asking that question because I was trying to confirm; I believe that one of the companies that I do own has a contract with Docomo concerning a telecom pole at a certain location, I believe it is in Merizo.

Diane Guzman we have utility poles down in Merizo, but we don't have a tower in Merizo.

<u>Commissioner Oh</u> well, I do have a contract with them.

Commissioner Bathan so, you have a conflict with Docomo.

<u>Commissioner Oh</u> so, I just remembered that. So, I'd like to mention that and definitely need to recuse myself.

<u>Vice Chairman Cruz</u> what is your contract with Docomo?

<u>Diane Guzman</u> we have a tripod on top of the Bank of Guam location in Merizo. Cathy's Mini Mart I believe is the name of the store. We have a tripod on top of that rooftop, and that is with Commissioner Oh.

Vice Chairman Cruz that is your contract?

Commissioner Oh yes; I'm sorry, I just remembered that.

Chairman Arroyo okay.

[For the Record, Commissioner Oh was recused from further participating on the Docomo application due to personal conflict.]

<u>Chairman Arroyo</u> any other questions? [None noted] I want to get back to the FCC and how all that works. Were you saying that you get a certification from FCC prior to erecting the tower?

Diane Guzman at the time of application they register it.

<u>Jowell Lapira</u> no; actually before we can broadcast or build a network we have to get granted for the frequencies that we are applying for. It's like an auction with the FCC they have these bands of frequencies and they also regulate the frequencies.

<u>Chairman Arroyo</u> so you are registered or allotted or whatever frequency. When does that happen? Prior to or after you've erected the tower?

Jowell Lapira before you build the entire network you should have the frequencies.

<u>Chairman Arroyo</u> when you want to energize and go live with the tower, do you do any kind of certification? Do you communicate with them and say, okay this is ready to go or do you just flip the switch.

<u>Jowell Lapira</u> yes, we have that for the microwave transmission part; it's just a point to point microwave. FCC is giving us 18-months to construction, and once you have completed the construction prior to activating we need to report to them that we will be transmitting.

Chairman Arroyo do you they reply back saying go ahead, do they check anything prior to?

<u>Jowell Lapira</u> because we submit data sheets for the equipment; as long we comply with them and not transmitting more than what is applied. They are very strict actually. Even antenna placements like the height.

<u>Chairman Arroyo</u> how do they know that you are complying with them? Is there some type of equipment that they use?

<u>Jowell Lapira</u> they have what they call (undecipherable) coordination notice, and there is a frequency study. Once Docomo applies for certain frequency, they send out this data sheet to different operators. So, prior to transmitting they will send this out to all operators and from there all the operators will check on their side. If someone will complain, a technical complaint the frequency that you are applying for is close to the frequency that we are using. If they complain to FCC about our application that is the time FCC will work on it.

<u>Michael Borja</u> the question here should be, your equipment is certified by FCC. Just like your cellphone, if you look, there is in fine print an FCC number. So, your equipment is certified by FCC.

Jowell Lapira FCC is the one that is regulating all the frequencies.

<u>Chairman Arroyo</u> so you are saying that they are regulated by receiving complaints from your competitors. The only way you will know that you have a problem, your competitor is saying something bad.

Jowell Lapira because they want to prevent interference with their system.

<u>Chairman Arroyo</u> the question that I am getting at is you are saying that you are transmitting at 40 watts. Is there a possibility that you might be able to transmit more than that?

<u>Jowell Lapira</u> no, because the equipment is designed for 40 watts, and there is no possibility that that will override more than 40 watts.

[Lengthy discussion ensues on adjustment of the antennas. Mr. Lapira explains that there is a fixed adjustment based on the antenna model and that they control the tilt of the antennas and monitored by regular drive tests which is conducted once a year. However, if there are complaints from subscribers a drive test will be done.]

Chairman Arroyo how does the FCC monitor Docomo on an ongoing basis?

Jowell Lapira they don't monitor it.

<u>Vice Chairman Cruz</u> you end up getting this building permit and everything. So, tell me what involvement does DPW have from the time you get the permit.

<u>Diane Guzman</u>! believe with DPW it is the completion of the concrete slab, the foundation. And from there we just an inspection.

<u>Vice Chairman Cruz</u> once you pour the concrete to hold this tower up and once they put the so-called chain link fence around, that is the end of their so that is why I guess everybody wanted to know about occupancy. So, your occupancy is, in otherwords, once you finish that tower, once you put all your equipment and ready and you are ready so-call energize it. Who do you go to to get approval to energize?

Diane Guzman we don't. We were informed that we do not need an occupancy permit.

<u>Vice Chairman Cruz</u> I'm not asking you that. We're done with DPW. What I am trying to say, you put this thing up...

<u>Diane Guzman</u> we apply with GPA we need power. If you are talking about the placements of the antennas that is done in-house.

Vice Chairman Cruz before you energize that tower who do you go to energize.

Diane Guzman it's just in-house and GPA.

Vice Chairman Cruz so, where does FCC come in.

<u>Jowell Lapira</u> because we already have the license to broadcast. As soon as we finish the site and check that everything is okay then we broadcast. Acquiring the license is for the frequencies. We cannot even build it unless you have the license. You are not even allowed to build or even install the equipment.

<u>Vice Chairman Cruz</u> you put this tower up is it by piece?

Jowell Lapira yes, it is pre-section for the 100-foot monopole; it's a three section, sleeve type.

<u>Vice Chairman Cruz</u> how close is the closest residence to your tower?

<u>Jowell Lapira</u> for Piga, it's just on the other side of the road; less than 100-feet or 100-feet from the base of the monopole.

Vice Chairman Cruz that is the closest residence you have everywhere? Even in Barrigada?

Jowell Lapira yes, all the sites.

<u>Vice Chairman Cruz</u> when you are erecting that you inform the neighbors around that, hey we're going to put this thing up.

<u>Jowell Lapira</u> yes, because prior to that when we are just doing a foundation a lot of neighbors are already asking.

<u>Vice Chairman Cruz</u> the question I am asking you is that the safety of the people around. Are there people around this 100-foot when you are putting this thing up? They are?

<u>Diane Guzman</u> I am sure they are, and no we do not inform them. Our contractor that is placing them, we give them that full responsibility on the safety of the residents.

<u>Jowell Lapira</u> we have an in-house safety officer and at the same time there is a safety officer with the contractor.

<u>Vice Chairman Cruz</u> the tower is going up and you have traffic going by you don't stop the traffic?

Jowell Lapira it is the contractor that does that regarding safety.

<u>Michael Borja</u> what are these towers wind rated at and what are the devices attached to the towers when rated to be.

<u>Jowell Lapira</u> the tower itself and the foundation was designed for 210 mph. And the antennas are rated at 120 mph.

<u>Michael Borja</u> 100-feet up the winds are little, sometimes worse than at the surface. Do you expect them to be ripped off?

<u>Jowell Lapira</u> we experienced that at the last typhoon in Saipan on top of Mt. Tapochau; we had some antennas there that were ripped off, but not the tower. The last typhoon there was about two years ago. We have not experienced that on Guam.

<u>Chairman Arroyo</u> any other questions? [None] Okay, so I am going to open the floor for public comments. Please state your name for the record.

Public Comments

Catalina Limtuatco I am a resident at Chalan Koda.

Edwin Limtuatco good afternoon sir/ma'am; I am a resident of Chalan Koda as well. So, like what Ms. Celine said, we were there during the testimony on January 3, 2017 to voice our concern concerning about the monopole and what the impact might have on us specifically. So, what we had brought up was we are worried that the radiation that it emits will have an effect on our health not only to us, but also to our little ones. We still have little ones in the house. We are worried that it will have an effect to them maybe not now, but in the future. I mean, we are not against for the technology upgrade or anything like that. It was just that we were concerned about how the monopole was built. Because we were not informed on what is going up in that area. At the same time people residing in that area is really close to the monopole. There are some houses close to that road. Our concern is that even though that they provided, they say had provided information it wasn't really provided to us during that time before the construction. The information was provided during the public hearing that happened at the community center. We were not aware of any information concerning that monopole. I just want to bring up that it seems to be that the erection of the monopole has been erected prior to the approval of rezoning. I know that the 2001-36 was executed during 2001, but during that time if you noticed, 2001 to 2017 why is it only now that all the monopole is being erected? There is a big gap between 2001 to 2017. I mean, a lot has changed already. I mean, they mentioned that they've

been using 40-watts then and they're using 40-watts now. So, what does it make a difference that why ... and then also the thing that I heard from the testimony was the elevation. The elevation in our area is flat. It's not in a high area it is totally flat, and a lot of people are residing there now. And occupant wise, like I said, there are a lot of people living in that area. Now, concerning about the microwave. Now, if people residing in that area has a pacemaker, don't you think that they will be affected by this initial of radiation? Just going down alone it scares my kids also seeing that tower over there. This is an agricultural area; agricultural area going to commercial or business that's kind of ... that's far from being ... I know that you have to apply for rezone, but agricultural where all people reside there hasn't been any water infrastructure, sewage infrastructure; I know it's just monopole but all I'm saying is this pole we might know it now but surely it will have an effect to us in the future. Right now even it's not situated. it's not going down even though it's projecting horizontally, but as soon as you turn on that cell phone it will emit a radiation. And we cannot compare microwave against a radiation. Microwave you use that seldom you don't use that 24-hours. The monopole will be used for the everyday. 24-hours, 7 days a week. If you multiply that in a year that is a lot of radiation that will go to the houses. Consider that.

Catalina Limtuatco I would just like to when this pole was first built we didn't know. We were just passing through it we thought it was a house. It was July 2015 when I first even noted it. And then we found out through the people working there that they're building a tower. So, we were like, okay, who owns this tower, and that's the people who are just working there that we found. And then what happened was we made everybody sign a petition sending a letter to Docomo saying that why are you building this tower and like the feasibility of the health concern and everything else in that area! Around September, October they put a permit. Actually, there was no permit yet when they were building this tower. There was no permit that was posted it was just Something is being dug and we were like probably this is a house. How many weeks passed by and we were like what are they building here and that is when one of the workers was saying that it was a tower. It was somewhere in October, November that they posted the building permit that says it was Docomo. We sent a letter to the President of Docomo and get an email back and all these things and the safety and everything that and then after 2015then it was all of sudden they built the tower so fast! I don't know it was just a matter of months that they built the tower up! We don't know what to do anymore with that tower. It's already built and done. What are we going to do it's already done! Public hearing is even done after the tower was built!

[Mrs. Limtuatco continues reiterating her above comments, including health issues, kids playing in the area, third party assurances, drive by testing, auditing of the tower.]

Edwin Limtuatco I agree with Mr. Borja concerning the process. The process is that everything was built even before everything has been obtained; all the approval between all the departments. And the rezoning is ... I'm not sure the rezoning part. Why is it It's from agricultural to commercial, business ... but, I'm just saying that the process already done even before all the approval has been granted and everything has already been erected. Now, the issue here is ... I guess our issue is really our health concern about the tower being built in our area.

Chairman Arroyo how many houses around the area?

Edwin Limtuatco there are four close to the monopole and there are two in our area, eight nine; there are houses in the area. It's already paved that main road. In our area, it is still a dirt road going to our house. There are houses close to that site.

Chairman Arroyo are there any homes closer than 100-feet?

Edwin Limtuatco those three, four, five ... all closer to 100.

[Discussion ensues on the proximity of homes close to the tower.]

<u>Celine Cruz</u> it is a 50-foot right-of-way and the fence line is right along the tower site. And so, there is a house immediately across it; so it is less than 100-feet, but it has to be maybe more than 65-feet from the site. There's a house within 100-feet, maybe 75-feet —

<u>Chairman Arroyo</u> is there anything that sets a buffer? Is there any law or regulation that sets a buffer?

<u>Celine Cruz</u> no. As an accessory structure it just needs to meet the requirements of an accessory structure.

<u>Chairman Arroyo</u> do you feel that now that this tower is up and operational that it has affected the value of your home?

Edwin Limtuatco we're not trying our sell our home. The value of the home we have no question if it's going to up or down. We are more concerned with our health issues. But, we are not there to sell our home that is our residence.

<u>Chairman Arroyo</u> what I am saying is that do you think it would be more difficult for you to sell your home because of the tower?

Edwin Limtuatco yes.

Chairman Arroyo are you familiar with Executive Order 2001-36? You know that it allows them to erect the tower and then come to us; it's kind of after the fact. There is not much we can do about that. We really can't respond to your concerns regarding the health and safety issues. I would rather prefer that there was something regulating these drive-by tests; rather than just being a company policy, that there is some local law that requires that to take place and to be reported somewhere (Public Health, EPA, I don't really know) so that they are being checked to make sure that they are in compliance especially since it appears that the FCC is not necessarily monitoring that. They indicated earlier that there hasn't been since 2000, there haven't been any incidences that they are aware of of anybody being physically harmed by the proximity of what the emission. But, I don't know if there has been any actually and they just don't know about it. I understand your concerns. But, where we are at and the only thing that we can do is just to follow what is in the executive order. But, I understand your concerns and feel for you. They should have engaged you prior to erecting it; and if for anything, just to put your mind at ease that this is not going to be detrimental to your health and given you sometime to address that. These things kind of prevent us from even questioning them. I just wanted to know what is in place that monitors them like on an ongoing basis to make sure that they are compliant with the regulations, and I guess we found that out today.

<u>Vice Chairman Cruz</u> you kept mentioning something about zone (**Mr. Limtuatco responds** "yes sir"). For your information, this type of activity is allowed in almost any kind of zone. They do not need to require to change the zone. Based on the executive order it is allowed in agricultural, in industrial and commercial. So, the zoning around your area will not change. I just wanted you to know that.

Chairman Arroyo are you customers of Docomo?

Edwin Limtuatco yes sir.

<u>Chairman Arroyo</u>! think what he said earlier is that they will come and do the drive-by test if a customer complains. So, use that to your advantage.

Edwin Limtuatco we don't want to complain about the technical part we want to complain about the health.

<u>Chairman Arroyo</u> they do the drive-by test to make sure that the emission of wattages is no greater than 40-watts. Like I said, I understand how you feel and I wish there was more we can do to help you.

<u>Catalina Limtuatco</u> we just want a third party saying, telling us that ... for a feasibility study that would have been done kind of thing to just give us at peace. I know a lot of our neighbors are concerned about it. (Sic)

[Discussion ensues on studies regarding monopoles]

Edward Andersen Leon Guerrero nice to be back to Guam.

Adolfo Bolmeo I am part of the application of Docomo.

Edward Leon Guerrero as a former planning commissioner for the state of Oregon, Medford City and former Chief Planner, I agree and understand where you guys are. It is so unfortunate what they have done here on Guam where they put the cart before the bull. This process requires ... public hearing first, entertain all the pros and cons before a decision is made. There is a new executive order that correct that policy which is great. Unfortunately, like laws all over the United States to include Medford and Guam, if the applicant prepares everything in accordance with law, you guys have no choice but to say yes. But, we are here to show you that we understand. My associate here who is a professional engineer has the most also to say because the tower that was built is on his property, and two more lots around. Historically, whether it be winding of the road or putting a new road or having this tower some people will hurt and some will profit. That is the fact of life. I am also a consumer of Docomo, and we need this. Our scientist as well as the business people will not venture into any business when it is going to be very harmful. Historically it's written that in life there will always some degree of hazard that we cannot live in a world that is 100-percent or zero hazard. If I recall, when the executive order was created in Guam they were really trying to get Guam into more technology. To the neighbors, we feel your pain. To you lady and gentlemen, we understand that they put you guys here to cushion the impact of our community. Your job Commissioners is very tough because you have to read tons of material; you have to review in order to do justice. I want to thank you for your service, and God bless all of you. Guam is beautiful. I am here to testify that I am in favor on behalf of my associates who are property owners right in the middle where the thing is.

Adolfo Bolmeo I am the owner of the land. I want to address the concern that there are only three houses that are within 100-feet of the tower; and the process that they are complaining, was followed in accordance with the executive order. The concern about the radiation that is covered by FCC because if it was harmful to you the FCC will put a stop.

<u>Chairman Arroyo</u> thank you, appreciate your comments. Is there anyone who would like to make comments on this application? Okay, so we will close public comment period.

Do you have anything to say after hearing what the public had to say?

Jowell Lapira to add more to health concerns, radiation. If they are worried about radiation, the RFs that our equipment are emitting is non-ionizing frequency. It starts from like FM frequencies up to any equipment that produces heat is non-ionizing. If you compare to an ionizing radio frequencies which is like the X-ray machines those are the ones that can cause cancer. Non-ionizing equipment does not cause any cancer in humans. If they have concerns about the integrity of the poles, about the construction, we are building it properly based on the loading of the antennas and at the same time wind loading and requirements of the government.

Michael Borja how deep is the foundation?

<u>Jowell Lapira</u> the foundation is around 8-feet, and then it's like 18-feet x 18-feet wide. They designed two types of foundation; they design it on like if it was to be built on coral or soft soil (like down south) we have two choices of what type of foundation we are going to use.

Michael Borja so, is the ground there rock?

Jowell Lapira up north is usually like coral. That is what the structural engineer recommended.

<u>Chairman Arroyo</u> any other questions? [None noted from Commissioners] I think there were some comments that were made during the public comment period that some of the homes maybe closer than 100-feet. I don't know if you want to verify that or not, but apparently there is disagreement with your statement and some of the residents feel.

Vice Chairman Cruz what is a test drive?

Jowell Lapira radio frequency drive test.

Vice Chairman Cruz when you do this how long does the test last?

<u>Jowell Lapira</u> we usually drive within the vicinity where there are complaints, and at the same time we are doing our own audits that we should maintain our coverage plat that we designed. If there are some changes that does not coincide with our coverage plat then we need to do some adjustments. If there are complaints with residents that they are not getting good signal from their side even though they are close to the cell site then we will do some optimization with the cell site.

Vice Chairman Cruz when you are doing this give me a timeframe; 30 minutes, an hour, what.

Jowell Lapira we just need to drive along the road like where the busy areas are.

[Lengthy discussion ensues on RF drive tests]

<u>Chairman Arroyo</u> any other questions? [None] I am ready to entertain a motion on this application. Anybody care to put one forward –

<u>Vice Chairman Cruz</u> I would like to make a motion Mr. Chairman, to approve the request for a zone variance for height for the applicant Docomo Pacific for a 100-foot telecommunication monopole tower, on Lot 34, Tract 542, in an agricultural zone in the municipality of Dededo, under Application No. 2016-23 with the following conditions:

- 1. The applicant adheres to all ARC conditions stipulated in the official position statements;
- 2. That the initial approval shall be limited to two (2) years; the applicant shall appear before the Commission and provide a status report during these two years; and,
- 3. The applicant must inform and advise residents within the 500-foot radius, to include the village Mayor when conducting drive-tests at this site as well as all sites and future sites.

Diane Guzman just for the drive-test?

<u>Vice Chairman Cruz</u> yes, but you have to let everybody know. That is why we included the Mayor so that if you need assistance the Mayor can help you.

Chairman Arroyo motion by Vice Chairman Cruz, do I have a second.

Commissioner Bathan second.

<u>Chairman Arroyo</u> any discussion? [None] On the motion, all in favor say "aye" [Chairman Arroyo, Vice Chairman Cruz and Commissioner Bathan], all opposed say "nay."

[Motion to approve Application 2016-23 was passed; 3 ayes, 0 nay, 2 recused]

Chairman Arroyo we'll take a 10-minute break.

[Commission recessed at 3:30 p.m. and reconvened at 3:45 p.m.]

<u>Chairman Arroyo</u> let's reconvene the meeting; we are back in session. The next item on the agenda ---

III. Old or Unfinished Business

Status Report/Order to Show Cause

A. Guam Wanfang Construction Ltd.; six-month status report and continuation of an Order to Show Cause on the conditions of approval for a previously approved Height Variance for the proposed Pago Bay Marine Resort, in the Municipality of Yona, under Application No. 2015-29B. [Continuation form GLUC meeting of May 25, 2017]

<u>Marvin Aguilar</u> reads Commission Brief in its entirety. [For full content/context refer to attached brief.]

[Attachment A – Commission Brief dated June 16, 2017]

<u>Chairman Arroyo</u> any questions or comments? [None noted] Okay, so we will open the floor to the applicant. Please state your name for the record.

<u>Barbara Burkhardt</u> (AES Designers representing Wanfang Construction and the owners). We went over the status update which was also attached to the request for extension in time. I want to make one comment in regard to a couple of sentences here. We have slowed down the project and our engineering, but we have not stopped it. If you drive by the subdivision you will notice that the park for the reinternment of the ancient remains the walls are up. We are putting in brick pavers, we had our dirt delivered and we are on track to finish on or before August 1st.

We have a two-part process with Parks and Rec, and our community representative Ann Marie Arceo works with us as our representative to Parks and Rec. The second part is the reinternment of remains, and we have a work plan in front of them and we go through each item; we are only through two or three items. Our Archeologist is retired and he is coming back on island for two weeks (June 28th) to get us started. An Archeologist must be involved in the reinternment process, there are a number of steps, and he needs to be present and we need to get through a substantial amount. The remains need to be examined by the Archeologist and so we need to start the chain by which the remains can be removed and then buried at the site. It took us ten years to get to this point, and this process was stopped for ten years. I think we have showed remarkable progress over the last six months to get the location approved, the park built, we get our retired Archeologist on island next week so we he can start the remains. Parks and Rec doesn't feel that they should be held to a timeframe like next week or next year or ten years. They feel that the right process should be followed, and we are working with their guidance with Ann Marie Arceo to follow their process. We would like it to happen sooner, but Parks and Rec will not hurry the process just to meet a deadline. But, we are very pleased with the progress and working with Parks and Rec; and we anticipate in the next six months to twelve months that we will have the remains buried in the park.

So, we are not stopping. The other thing that we are not stopping on is that we are proceeding with the grading permit, and about a third of the Notice of Action items are covered in the grading permit. In otherwords, we have a total of five permits that we will be processing to meet the requirements of the NOA. Some will overlap into other permits, but we are directly addressing the NOA with the grading permit. That was a correction to the comments from DLM. We haven't stopped, we have just slowed down and we are working on things that are very important.

I await the meeting minutes; we would like your comments on the bond and we will immediately address those with our attorneys, we just need your comments in writing from the meeting minutes at this point to get the bond going.

We have other things in play, but those are certainly substantial items which assist in continuing to progress.

<u>Chairman Arroyo</u> you said the meeting minutes on the bond, you said you had some comments.

Barbara Burkhardt well you made some I apologize I really didn't hear; you made some comments in regard to the bond. There was discussion here I didn't make any notes in regard to the bond. I am assume the comments are in the meeting minutes.

<u>Chairman Arroyo</u> I think we were just asking when you received ... apparently we did have some comments and you said you got it that very same day as the day of the meeting.

Barbara Burkhardt we have not received a written response from you. All we heard were comments in the meeting. We want to resolve that.

Chairman Arroyo I thought you had said you had received the comments on that day.

Barbara Burkhardt nothing from you, nothing from the AG.

Marvin Aquilar it was, I think (that is why I went through my report) it was actually officially presented by Mr. Toft. I will have to clarify that.

Chairman Arroyo do you know when those comments will be available?

Marvin Aguilar I can't speak for Mr. Toft at this point, but we did have discussions prior to this.

Chairman Arroyo I thought you had received something formally.

<u>Barbara Burkhardt</u> no, we just received ... there was a little ... I apologize, it's like there was chatter and, you know It was all verbal, we have not received anything. So, we are ready to go to the next step with the Board when we receive the comments.

<u>Chairman Arroyo</u> is that all Barbara? [Ms. Burkhardt responds "yes."] Any questions or comments?

<u>Vice Chairman Cruz</u> with the lengthy conditions set on the NOA, and you just told me now that you are about how many percent?

Barbara Burkhardt can I give you some statistics on the NOA?

Vice Chairman Cruz let me finish...how many percent about thirty?

Barbara Burkhardt with the grading permit we are through about a third of the comments.

<u>Vice Chairman Cruz</u> let me ask you then this question; within those NOA that you've seen there and everything, can you provide this Commission with a milestone using that NOA that was given to you that you can say that within this milestone we have completed this, this, within, let's say, a six-month period?

Barbara Burkhardt yes sir.

<u>Vice Chairman Cruz</u> would you be able to provide that to this Commission through the Chief Planner within a couple weeks or a month? You will be able to provide that?

Barbara Burkhardt yes sir; to be honest with you, I have all the basis for that right now. When I said that about a third of the comments are covered in the grading permit it's because I went through the NOA. Actually, Marvin suggested those. He said why don't you go through the NOA, highlight the items that are covered in the grading permit and make that part of the submission to the ARC agencies so that they understand what they are reviewing.

<u>Vice Chairman Cruz</u> one might be number three on the listing and the other one might be number thirty on the listing. But within those, on my part I want to know because I ... the reason I ask this question, and I want to make it known to the Commissioner here and to the public. I pass that road every day, twice a day and I do see things moving. But, I do not know when...I say you guys doing your boring and I saw other things going. So, for me to understand can you give that that you can say ... if you submit it and the plan and you give it to me this is what the developers can provide.

<u>Barbara Burkhardt</u> the only thing happening on site right now, we did a survey we staked out the high water mark the seventy-foot and thirty-foot setback and the corners of the building. So, that is the only activity. We did boring in October and we still need to do a perc (percolation) test. The only thing you will see on site is the perc test being done.

<u>Vice Chairman Cruz</u> so, can you give us that listing? I know it's a lengthy, but I would like to know.

Barbara Burkhardt yes, absolutely. Can I read a couple things to you in regard to the NOA? There's 52 items; two are what I call in the wording, it specifically says "pre-permit." And one is what I call Item A, the bond and the other is the disposition of the remains with Parks and Rec and I feel like we've made significant process on that. We have two post occupancy regulations in regard to pool chemicals and fertilizer on site those are regulations and agreements. I would say that that is an operational item and it is quite likely it will not be a hundred percent cleared during the permit process. That's when you do those items. And then we have three non-permit items. In otherwords, the ARC agencies and DLM will not be reviewing them. I think the easiest one on that is the Army Corps of Engineers; they are not within the ARC agency. We will be submitting for review, but the permit will not be held up because the Army Corps of Engineers has not issued a letter. An agreement with UOG to participate in the international clean-up of the beach and that is not within the permit. So, there are some things that are kind of out there that are not covered by the permit. So, it's complicated, and we are making, I believe we are making progress in all areas. As a project manager, it's a little more complicated than just applying for a permit to build a house or commercial structure it's a little complicated. And we continue to work on the items we can work on and to answer your question, yes, yes, we can submit. If you want to submit a deadline within the next four weeks, I will be happy to meet that deadline.

[Discussion ensues on the submittal date of milestone document.]

<u>Chairman Arroyo</u> any other comments, questions.

<u>Commissioner Oh</u> if this extension is to be granted. Considering the litigation that is ongoing. What's the project owner's plans currently in terms of construction progress.

<u>Barbara Burkhardt</u> well you know ... there is not a (I'm going to use the wrong word), the Judge did not stop us. He didn't say you have to stop, you can't build. He didn't say that. So, the question is if there is no stop and this litigation goes for ten years; the Courts are a different

timeline then a construction timeline. If the project is completed ... so, that is one question. The second is, I have no, I believe in the professionalism of what I do, and what Benavente and John Sherman did before me. I believe the professionalism of DLM, DPW, the ARC agencies and GLUC; so, I personally don't have a problem with the judicial review. We don't have any fear of the judicial review. We feel that the process was done in accordance with, you know, with people sitting in this room and the ARC agencies and When and if the judicial review comes up we feel that it will be fair to us, and whatever the Judge does we are prepared to accept that. We don't believe we are at risk if we start construction with the lawsuit going forward because there is no stop on the project from the Judge.

<u>Commissioner Oh</u> that was my question. My question is the ongoing litigation holding the project back from moving forward.

Barbara Burkhardt no; we finally got that motion and he ruled, I think, within two weeks of ... we finally got that first motion ruled on ... we were just like how come it's taking a lot of months to get the first motion to through the Court. We didn't understand why it took so long.

<u>Commissioner Oh</u> my question is, is the project owner willing to move forward with the construction.

<u>Barbara Burkhardt</u> yes, we are going through with the grading permit, we are completing the park. We are doing it at a slower rate for other reasons not necessarily the lawsuit.

<u>Commissioner Bathan</u> how are you handling the lack of skilled workers on Guam or lack of labor on Guam with your project.

Barbara Burkhardt we see the construction process in two parts, and we can start construction with our steel structure and kind of our modular construction method. Hopefully....the Congressional ... there are motions in the House of Representatives to remedy this. There was one last year and there's one this year. All businesses on Guam are suffering from this and hopefully House of Representatives will resolve this, and there's a lawsuit with GCA suing the federal government. I can't speculate on that.

Chairman Arroyo I have one comment and this is on Nick Toft's response, and it's unfortunate he is not here today because I really wanted to get some more clarification on this. He says specifically that if this constitutes the fact that there was a delay from the Commission in approving the language in the bond which the applicant had contended ... it was required prior to securing the permits. So, he says that if that constitutes sufficient reason for the applicant's failure to secure the extension prior to the deadline then we should vote and provide the extension, otherwise we should vote and not provide the extension. We do know that you actually did apply for a permit and it's in the process right now. It doesn't appear that us in delaying the language on the bond to you or the permit for the reinternment actually stopped you from applying for a permit because you already did that. So, I do want to talk to Nick a little more about that because it seems like what he is saying is that since you've already applied for the permit, we should vote not to allow the extension. I want to get some clarification on that, but we can't do that today because he's not here.

So, what I'd like to do and I hate to do this and hate to keep you waiting, is to continue this until our Legal Counsel is available to respond and clarify some of the comments that he's made in this reply to our inquiries. If that is okay with everybody. [Commissioners had no objection to the Chairman's request.]

Chairman Arroyo I want to make sure that if we vote today and we allow the extension that he's not going to come bak later and say you should have not allowed it because of the comment that he made here. I want to make sure that we are on legal standing when we make a decision on this. I'm sorry Barbara that we have to delay this.

Barbara Burkhardt it's okay. Can we write you a letter in regard to that?

<u>Chairman Arroyo</u> absolutely. In the meantime, you can submit the milestones that the Vice Chairman has requested.

So, it is the order of the Chairman that we continue this application until such time that Legal Counsel is available to respond to any questions that we may have with regard to his comments to us regarding the extension.

V. Administrative and Miscellaneous Matters

<u>Chairman Arroyo</u> any other business to discuss today?

Marvin Aguilar I don't know if I am in order to request consideration and discussion on the issue on Guahan Academy.

<u>Chairman Arroyo</u> is this just for information only? [Mr. Aguilar responds, "yes, information only."] Please go ahead.

Michael Borja how do you want me to address this question to Nick?

<u>Chairman Arroyo</u> could he provide additional comment. We know that they actually applied for the permit prior to them getting a reply, a formal reply on the bonding language and also prior to getting the permit for the reinternment; which then to me says, we should approve the extension...per his writing.

Michael Borja I will send him an email.

Chairman Arroyo Marvin, go ahead.

Marvin Aguilar so, have Guahan Academy who is operating in a former officers/bachelors' quarters, facilities in Tiyan. They need to vacate that building. They found a spot which is the old officer's club; and when it was released served as the former DMV office. They want to move there. Apparently, they have an agreement to move in there from the civilian owner now. They also want to utilize a warehouse as part of their facility for their operation. They were under the impression that you can get an expedited conditional use permit, but it doesn't exist. Because of the deadline that they are faced with because they need to open their facility in August, and they are expecting an additional 1,200 students this year. They really need to move portions of the population for a set age group and operate. I am suggesting that perhaps there is a possibility that the Commission, in light of the fact, that they are in operation in the general area, with the same impacts to include parking, traffic, what-not, that they Commission may consider a resolution to allow them temporary stay or temporary use of this facility until they can apply for a conditional use permit or if the property is rezoned.

Chairman Arroyo what is it zoned now?

Marvin Aguilar agricultural.

<u>Commissioner Bathan</u> do they have to go to ARC because we do not know if it is suitable for their use.

<u>Marvin Aguilar</u> they definitely would need to get a permit, and technically they would be going through the ARC through the building permit requirement. The problem was there was an expectation that the property would be rezoned through the Legislature.

<u>Michael Boria</u> they pushed that legislation through, but it stalled. But, they got passed into law the other legislation that rezoned some properties in Radio Barrigada to S-1 for their purpose too. Why they're not moving on that one; I mean that one was expedited and didn't come through us for rezoning they went to the Legislature and got it done.

Chairman Arroyo so, that rezoning was specifically for Guahan Academy the S-1?

Marvin Aguilar yes.

[Lengthy discussion ensues]

Commissioner Oh I just want to quickly mention something. I was talking to some individuals. I know the Governor has some initiatives when it comes to low incoming housing, and some individuals brought up certain types of accessory housing projects that they've done in Hawaii. I wanted to discuss this with Marvin concerning the technicalities. The idea behind this is when you have a single family dwelling of R-1 zone lot you can build an accessory structure to this. It is a detached or attached as a "maid's quarter." It can also be leased out to low incoming individuals. Are there certain restrictions concerning this in our current Code?

Marvin Aguilar yes.

[Lengthy discussion ensues]

VI. Adjournment

Vice Chairman Cruz motion to adjourn.

Commissioner Bathan second.

<u>Chairman Arroyo</u> all in favor say "aye." [Chairman Arroyo, Vice Chair Cruz, Commissioners Bathan, Vy and Oh.] [Motion passed]

The regular meeting of the Guam Land Use Commission for Thursday, June 22, 2017 was adjourned at 4:32 p.m.

Approved by:

John Z. Arroyo, Chairman Guam Land Use Commission

Date approved:

Transcribed by:

M. Cristina Gutierrez Rec

Recording Secretary

DLM, Land Planning Division

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> Mailing Address: P.O. Box 2950 Hagåtña, GU 96932

Website: http://land.guam.gov

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Facsimile: 671-649-5383



ATTACHMENT A





MICHAEL J.B. BORJA Director

DAVID V. CAMACHO Deputy Director

EDDIE BAZA CALVO Governor

RAY TENORIO Lieutenant Governor

June 16, 2017

Memorandum

To:

Chairman, Guam Land Use Commission

From:

Guam Chief Planner

Subject:

Commission Brief - Application No. 2015-29B

Re:

Continuation-

Status report on conditions of approval (3rd Submittal)

At its regularly scheduled meeting of May 25, 2017 the Guam Land Use Commission deliberated on information provided by Guam Wanfang Construction, Ltd's 3rd six-month reporting requirement.

As part of its 3rd submitted report, AES requests for an extension of relief where,

"The applicant shall apply for and receive a building or grading permit for the approved project within One (1) year of the date of recordation of the Notice of Action, otherwise, the approval of the project as granted by the Commission shall expire; provided, however, that the Commission may grant Two (2) one-year extensions of the above approval period".

AES noted reasons for this request were based on the following:

- 1. The extended review by DPR to obtain its first permit on the re-burial program, of which appears to have taken six (6) months to its current status;
- 2. Ongoing litigation of the project in court, to which ruling has yet to occur and causing a default on AES to hold design and engineering work at 50%; and
- 3. Reconsideration of construction methodology however, as a result of a workforce shortage on Guam the applicant felt it necessary from completing construction documents until the workforce issue has been resolved.

After lengthy discussion the Commission focused on the matter of its authority to grant extensions as allowed under Executive Order 96-26, section 5. That the application be continued pending the following:

Additional guidance from Legal Counsel/AG's Office on whether or not the Commission
has the authority to grant the applicant's request for extension when the Notice of Action has
expired; and,

Previous applications to determine how the GLUC proceeded with expired NOAs and whether or not the Commission has approved requests for extension on expired NOAs in the past.

In response to this request, Assistant Attorney General Nick Toft, Esq. provided the following response¹:

The issue presented was whether the Board could deliberate on whether or not to grant Wanfang an extension on their requirement to obtain a building or grading permit within a year of the receipt of their Notice of Action, given the language of Executive Order 96-26 section 5. I will proceed step-by-step with the sub-issues presented and attempt to explain succinctly the processes and conclusions.

First, Wanfang submitted its request for an extension on May 2, prior to the expiration of the one year period, but not in time for the GLUC to perform any action upon it, as the deadline was May 10. The preliminary issue is whether the Board has the jurisdiction to consider the request at all. I believe it does, under the same case law and logic as presented in the Decision and Order in SP0102-16, the Save Southern Guam appeal from the GLUC's initial approval. The time limit appears to be what's called a claims processing rule, versu a jurisdictional rule, because there is no legislative (or in this case, executive) intent to divest the board of the ability to examine the request after the deadline has expired. See, also, Sebelius v. Auburn Reg'l Med. Ctr., 133 S.Ct. 817 (2013).

At this point, I will mention two prior instances of the GLUC considering extensions of NOA's after the deadline had expired. On 8/11/16, GLUC told FC Benavente Planners and Dr. and Mrs. Alegria* that their NOA was null and void, as it had expired, and their request came two months after the deadline had passed. They were told that a new Notice of Action with new dates would be needed. Because this was a project in Tumon with a Tentative Development Plan, they were told they did not need a new public hearing, and a vote for a new NOA was immediately taken and passed. On 2/10/11, GLUC told Takano Towers*, who had applied for a height variance, that because their request for an extension was received on the day of the expiration, they would consider the request. The commission noted that the developers were having difficulties with GWA regarding the infrastructure, and unanimously approved the motion to grant the extension, even though the meeting was two months after the expiration of the NOA.

Which leads to the next sub-issue – if GLUC has the ability to vote upon the extension, is there anything to be considered? I believe there is – In Sebelius, as well as Save Southern Guam's appeal, the courts allowed for equitable remedies to be available for the failure to meet the statutory deadline. In a way, and I'll explain, I believe the GLUC in the Takano Towers did so as well. As pointed out in the Save Southern Guam opinion, there are two equitable doctrines – tolling and estoppel. Equitable tolling occurs when there has been deception or misrepresentation by the GLUC, which does not appear to be the case here. Equitable estoppel may be invoked if Wanfang's failure to meet the filing deadline was the consequence of a deliberate design by GLUC or because of actions that GLUC should unmistakably have understood would cause Wanfang to miss the deadline.

¹ Source of comments are from Assistant Attorney General Mr. Nicolas Toft, Esq. and forwarded via email to the Guam Chief Planner for distribution to members of the Guam Land Use Commission and its Executive Secretary.

And that is the point on which the GLUC should vote. Wanfang has alleged that one of the reasons for its failure to meet the deadline was due to GLUC's delay in approving the language of the demolition bond, which they contended had to occur prior to the securing of permits. So if this constituted a sufficient reason for Wanfang to fail to secure an extension prior to the deadline, the Board should vote to provide the extension. If not, the Board should vote to deny the extension, the NOA would have expired, and GLUC/Wanfang can then examine the possibility of creating a new NOA.

* The assistant Attorney General references two (2) land use applications that were considered for issuance for an extension and actions taken, as requested by the GLUC.

We reiterate our position that in the event a one-year extension is considered for this project basis for such action should address whether or not an opportunity exists to insure protection and promotion of public safety, public health, and general welfare, or for such matter if such caveat can be achieved should the project be forced into a drawn out timeline.

Likewise, focus should be placed on the management of the project and perhaps a reassessment is in order to first, determine if requirements of the issued Notice of Action (NOA) can be fulfilled in light of pending issues beyond the control of either the project owner or the Guam Land Use Commission. Second, since the applicant has decided to hold back on further expending resources until suitable conditions to commence forward movement, then perhaps the Commission may wish to "re-set" the requirements of NOA, this without compromising purpose to which such conditions were initially asserted. As an example, if the applicant remains compelled to remain status quo until suitable conditions to move forward occurs, then perhaps requirements such a 6-month reporting schedule may be moot however, the applicant should not be dissuaded from meeting other requirements as may be directed or may be achieved in the interim.

We remain available to provide further assistance to the Commission.

Marvin Q. Aguilar Guam Chief Planner

Attachments

Cristina Gutierrez

From:

Marvin Aquilar

Sent:

Friday, June 16, 2017 8:01 AM

To:

Cristina Gutierrez

Subject:

FW: Letter to the GLUC Board

Follow Up Flag:

Follow up

Flag Status:

Completed

Please pass this on to GLUC members and Executive Secretary. I will print and include it as part of my brief for next week. Thank you.

From: Nicolas Toft

Sent: Thursday, June 15, 2017 3:09 PM

To: Marvin Aguilar

ubject: Letter to the GLUC Board

Hi Marvin, can you pass this along to the members of the GLUC Board regarding the Wanfang extension request?

To the Chairman and Commissioners of the Board,

The issue presented was whether the Board could deliberate on whether or not to grant Wanfang an extension on their requirement to obtain a building or grading permit within a year of the receipt of their Notice of Action, given the language of Executive Order 96-26 section 5. I will proceed step-by-step with the sub-issues presented and attempt to explain succinctly the processes and conclusions.

First, Wanfang submitted its request for an extension on May 2, prior to the expiration of the one year period, but not in time for the GLUC to perform any action upon it, as the deadline was May 10. The preliminary issue is whether the Board has the jurisdiction to consider the request at all. I believe it does, under the same case law and logic as presented in the Decision and Order in SP0102-16, the Save Southern Guam appeal from the GLUC's initial approval. The time limit appears to be what's called a claims processing rule, versus a jurisdictional rule, because there is no legislative (or in this case, executive) intent to divest the board of the ability to examine the request after the deadline has expired. See, also, Sebelius v. Auburn Reg'l Med. Ctr., 133 S.Ct. 817 (2013).

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Which leads to the next sub-issue – if GLUC has the ability to vote upon the extension, is there anything to be considered? I believe there is – In Sebelius, as well as Save Southern Guam's appeal, the courts allowed for equitable remedies to be available for the failure to meet the statutory deadline. In a way, and I'll explain, I believe the GLUC in

Department of Land Management Office of the Reco. If
File for Record is Instrument No. 818628
On the Year U Month 03 Day 07 Time 2:34
decording Fee DE-OFFICIO Receipt No.
Deputy Recorder Jan Janosahi
(Space above for Recordation)
IMPORTANT NOTICE - READ CAREFULLY 'Pursuant to Section 5 of Executive Order 96-26, the applicant must apply for and receive a building or grading permit for the approved GLUC/GSPC project within one (1) year of the date of Recordation of this Notice of Action, otherwise, the approval of the project as granted by the Commission shall expire. This requirement shall not apply for application for Zone Change***."
Department of Land Management Government of Guarn P.O. Box 2950 Hagåtña, Guam 96932
NOTICE OF ACTION
February 14, 2011 Date
To: Carlos, Jr. & Rosemarie Takano Application No. <u>2009-49B/2009-49C</u> Represented Rosario & Associates, Inc. P.O. Box 1534 Hagåtña, Guam 96932
The Guam Land Use Commission, at its meeting on February 10, 2011.
/ Approved/ Disapproved XX / Approved with Conditions
/ Tabled
Your request on Lot 5147-2C-16NEW & Lot 4-1-R1, Tract 1341, Municipality of

NOTICE OF ACTION Carlos, Jr. & Rosemarie Takano	Application No. 2009-49B/C				
Lot 5147-2C-16NEW & Lot 4-1-R1, Tract 1341, Municipality of Tamuning GLUC Hearing of: February 10, 2011					
Date of Preparation of NOA: February	·				
Page 2 of 4	<u> </u>				
ZONING	SUBDIVISION				
/ Zone Change***	/ TENTATIVE				
/ Conditional Use	,				
/ Zone Variance	/ FINAL				
[] Height [] Use	/ EXTENSION OF TIME				
[] Density [] Other (Specify	/) / PL 28-126, SECTION				
() Colour	1(A)				
/ TENTATIVE DEVELOPMENT PLAN					
NOTE ON	I ZONE CHANGE				
***Approval by the Guam Land Use Commission of a ZONE CHANGE DOES NOT CONSTITUTE					
FINAL APPROVAL but rather a recommendation to the Governor for his approval. Applicant sha be notified upon action taken by the Governor. [Reference 21 GCA (Real Property), Chapte					
61(Zoning Law), Section 61634 (Decision by t	he Commission).]				
<u>SEASHORE</u>	HORIZONTAL PROPERTY REGIME				
/ WETLAND PRMIT	/ PRELIMINARY				
/ SEASHORE CLEARANCE	/ FINAL				
	/ SUPPLEMENTARY (SPECIFY)				
MISCELLANEOUS					
/ DETERMINATION OF					
POLICY AND/OR DEFINITIONS					
XXX / 1 st - 12-month Extension of Time Pursuant to E.O. 96-26,					
Section 5					

NOTICE OF ACTION

Application No. 2009-49B/200949C

Carlos, Jr. & Rosemarie Takano

Lot 5147-2C-16NEW & Lot 4-1-R1, Tract 1341, Municipality of Tamuning

GLUC Meeting of February 10, 2011

Date of Preparation of NOA: February 14, 2011

Page 3 of 4

APPLICATION DESCRIPTION: Pursuant to EO 96-26, Section 5, the Applicants, Carlos and Rosemarie Takano, represented by Richard Rosario & Associates. requests for an Extension of Time for another Twelve (12) Months on their Development which was originally approved for a Zone Variance for Height and Conditional Use Permit . (Note: This is the 1st Extension of Time)

COMMISSION DECISION: The Guam Land Use Commission APPROVED WITH **CONDITIONS** the Applicant's request:

COMMISSION CONDITIONS:

- A. That this extension is for one (1) year; and
- That the applicants adhere to conditions as provided in the original Notice B. of Action dated December 14, 2009 under DLM Document No. 799892 and/or any other new conditions as required by Permitting agencies during the permitting process; and
- That the Guam Chief Planner shall be informed of any new conditions C. imposed and required during the permitting process.

02-14-2011

Jay L. **Qather**

Guam Chief Planner

Chairman, Guam Land Use Commission

Case Planner: Marvin Aguilar

Attachment(s): Staff Report

Cc: Building Permits Section, DPW (Attn: Mr. Jesus Ninete)

Real Property Tax Division, Department of Revenue and Taxation

NOTICE OF ACTION Application No. 2009-49B/2009-49C Carlos, Jr. & Rosemarie Takano Lot 5147-2C-16NEW & Lot 4-1-R1, Tract 1341, Municipality of Tamuning GLUC Hearing of: February 10, 2011 Date of Preparation of NOA: February 14, 2011 Page 4 of 4						
CERTIFICATION OF U	JNDERSTANDING					
//We/ (Applicant [Please print name])	(Representative [Please print name])					
Understand that pursuant to Section 5 of E grading permit must be obtained for the ap (1) year of the date of recordation of this Note that project as granted by the Commission	proved GLUC/GSPC project within one otice of Action, otherwise, the approval					
I. We further understand that the Commis- year extension of the above approval perio						
This requirement shall not apply for applica	ation for a Zone Change***					
I/We, further AGREE and ACCEPT the con- Action and further AGREE TO ANY AND attached to this Notice of Action as mandated Commission or from the Guarn Seashore Protest	ALL CONDITIONS made a part of and by the approval from the Guam Land Use					
Romanie Jakono Signature of Applicant Date	Signature of Representative Date					
ONE (1) COPY OF RECORDED NOTICE OF ACTION RECEIVED BY:						
Applicant Date	Representative Date					

Island of Guam, Government of Guam Department of Land Management Officer of the Recorder
File for Record is Instrument No. 896456
On the Year \ Month OY Day 22 Time 3:22
Recording FeeDE-OFFICIO_Receipt No
Deputy Recorder Jam Jamosaki
(Space above for Recordation)

IMPORTANT NOTICE - READ CAREFULLY

"Pursuant to Section 5 of Executive Order 96-26, the applicant must apply for and receive a building or grading permit for the approved GLUC/GSPC project within one (1) year of the date of Recordation of this Notice of Action, otherwise, the approval of the project as granted by the Commission shall expire. This requirement shall not apply for application for Zone Change***."

GUAM LAND USE COMMISSION

ORIGINAL

Department of Land Management Government of Guam P.O. Box 2950 Hagåtña, Guam 96932

NOTICE OF ACTION

August 12, 2016 Date

To: Conrado V. and Katherine D. Alegria c/o F C Benavente, Planners 127 Bejong Street Barrigada, Guam 96913

Application No. 2011-52A

The Guam Land Use Commission, at its meeting on August 11, 2016.
/ Approved/ Disapproved _XX/ Approved with Conditions
/ Tabled
Your request for Renewal of a Previously Approved Tentative Development Plan (TDP) for Let No. 5112-2. Tumon, Municipality of Tamuning

Application No. 2011-52A

Conrado V. and Katherine D. Alegria RE: Lot No. 5112-2, Tumon Municipality of Tamuning GLUC Hearing Date: August 11, 2016 Page 2 of 4	Application 1101 <u>2011 024</u>			
ZONING	SUBDIVISION			
/ Zone Change***	/ Tentative			
	/ Final			
[] Height [] Use [] Density [] Other (Specify) [] Setback	/ Extension of Time			
XX / Tentative Development Plan	/ PL 28-126, SECTION 1(A)			
***Approval by the Guam Land Use Commission of a <u>ZONE CHANGE DOES NOT CONSTITUTE FINAL APPROVAL</u> but rather a recommendation to the Governor for his approval. Applicant shall be notified upon action taken by the Governor. [Reference 21 GCA (Real Property), Chapter 61(Zoning Law), Section 61634 (Decision by the Commission).]				
SEASHORE	HORIZONTAL PROPERTY REGIME			
/ Wetland Permit	/ Preliminary			
/ Seashore Clearance	/ Final			
	/ Supplementary (Specify)			
MISCELLANEOUS				
/ Determination of Policy and/or Definitions				
/ Other (Specify)				

NOTICE OF ACTION

NOTICE OF ACTION

Conrado V. and Katherine D. Alegria

RE: Lot No. 5112-2, Tumon Municipality of Tamuning

GLUC Hearing Date: August 11, 2016

Page 3 of 4

Application No. 2011-52A

<u>APPLICATION DESCRIPTION</u>: The applicant, Conrado V. and Katherine D. Alegria represented by FC Benavente, Planners, request for renewal of a previously approved Tentative Development Plan for the proposed development of a 4-unit apartment complex consisting of two (2), 2-storey duplexes on Lot 5112-2, Tumon in the Municipality of Tamuning.

<u>COMMISSION DECISION:</u> The Guam Land Use Commission <u>APPROVED</u> Application No. 2011-52A for a new Notice of Action of the previously approved TDP for the proposed development of a 4-unit apartment complex consisting of two, 2-storey duplexes on Lot 5112-2, Tamuning with the following conditions:

- A. Any future additional development or changes to the approved site plan shall require the applicant to submit an amended TDP application for review and approval by the Guam Land Use Commission; and
- B. Pursuant to the Interim "H" Hotel/Resort Rules & Regulations based on 18GAR, Section 3316; infrastructure improvements specified in the TDP shall be completed within eighteen (18) months from date of Recordation of this NOA; and
- C. Applicant shall comply with the Interim "H" Hotel/Resort regulations on yard area and height regulations; and
- **D.** Applicant shall also ensure compliance of the one (1) year time restrictions that states "a grading or building permit must be obtained from date of recordation of this Notice of Action otherwise the approval as granted by the Commission will be considered NULL and VOID, per E.O. 96-26, Section 5; and,

E. Pursuant to 18GAR Section 3315 a performance bond of 110 percent of the infrastructure cost shall be provided to the Department of Land Management.

Marvin Q. Aguilar Guam Chief Planner Date

-- 12-2016

John Z. Arrevo

Date

Guam Land Use Commission

Case Planner: Frank P. Taltano Cc: Building Permits Section, DPW

Real Property Tax Division, Department of Revenue and Taxation

NOTICE OF ACTION Conrado V. and Katherine D. Alegria

RE: Lot No. 5112-2, Tumon Municipality of Tamuning

GLUC Hearing Date: August 11, 2016

Page 3 of 4

Application No. 2011-52A

CERTIFICATION OF UNDERSTANDING

(Applicant [Please print name]) (Representative [Please print name])						
Understand that pursuant to Section 5 of Executive Order 96-26, that a building or grading permit must be obtained for the approved GLUC/GSPC project within one (1) year of the date of recordation of this Notice of Action, otherwise, the approval of the project as granted by the Commission shall expire.						
The Commission may grant two (2) one-year extensions of the above approval period at the time of initial approval.						
This requirement shall not apply for application for a Zone Change***						
I/We, further <u>AGREE</u> and <u>ACCEPT</u> the conditions above as a part of the Notice of Action and further <u>AGREE TO ANY AND ALL CONDITIONS</u> made a part of and attached to this Notice of Action as mandated by the approval from the Guam Land Use Commission or from the Guam Seashore Protection Commission.						
Signature of Applicant Date Signature of Representative Date						
ONE (1) COPY OF RECORDED NOTICE OF ACTION RECEIVED BY:						
Applicant Date Representative Date						

ATTACHMENT B



EDDIE BAZA CALVO Governor

Lieutenant Governor

DIPĂTTAMENTON MINANEHAN TÂNO' (Department of Land Management) GUBETNAMENTON GUĀHAN (Government of Guam)



MICHAEL J.B. BORJA Director

DAVID V. CAMACHO **Deputy Director**

Street Address: 590 S. Marine Corps Drive Suite 733 ITC Building Tamuning, GU 96913

> Mailing Address: P.O. Box 2950 Hagátňa, GU 96932

> Website: http://land.guam.gov

E-mail Address: dlmdir@land.guam.gov

Telephone: 671-649-LAND (5263)

> Facsimile: 671-649-5383



RAY TENORIO

June 16, 2017

MEMORANDUM

TO:

Chairman, Guam Land Use Commission

FROM: Guam Chief Planner

SUBJECT: Staff Report - Application No. 2016-23, Zone Variance on a Portion (2,414)

Square Feet) of Lot 34, Tract 542, Municipality of Dededo

PURPOSE: 1.

- A. Application Summary: The applicant, Docomo Pacific Guam, in compliance with Executive Order 2001-36 is requesting approval of its Zone Variance application for Use and Height to maintain and operate a 100' foot telecommunication monopole tower on a portion of Lot 34, Tract 542 municipality of Dededo.
- B. Legal Authority: Title 21, GCA (Real Property), Chapter 61 (Zoning Law) Sections 61616 to 61624 (Variances), Executive Order 2001-36 and GLUC Resolution No. 2008-02.

2. **FACTS:**

- A. Location: The lot is located along Chalan Koda in the Piga Subdivision of Dededo (See Attachment 1).
- B. Lot Area: The leased site is 2,414 Square Feet, as identified in a sketch of a portion from the total acreage of 1,462 sm.
- C. Present Zoning: "A" (Rural) Zone.
- D. Field Description: The leased portion of the lot is cleared and generally flat. Currently, there is a Telecommunications Monopole Tower and accessory structures within the leased portion of the lot.
- E. Masterplan: Rural-Agricultural.
- F. Community Design Plan: Conservation Open Space
- G. Previous Commission Action: None

3. <u>APPLICATION CHRONOLOGICAL FACTS:</u>

A. Date Application Accepted: June 1, 2016.

B. Date Heard By ARC: June 16, 2016

C. Public Hearing Results: The public hearing was conducted on January 31, 2017, 6:10 p.m., at the Dededo Senior Center. Present were Planning Division staff, representatives of Docomo Pacific Guam, and seven concerned citizens.

The public hearing was called to order at 6:10PM by Department of Land Management (DLM) Planning Division staff. A brief explanation on the purpose of the public hearing was provided to an audience of seven concerned citizens.

The applicant's representative, Ms. Diane Guzman, Lease Coordinator for Docomo Pacific Guam explained the project to the audience and opened the floor to questions regarding the project request; also present on behalf of the applicant were Mr. Jowell Lapira to assist with technical questions regarding cellular technology and Mr. Alejo Leon Guerrero (JR) who is the construction coordinator.

A resident of the Piga Subdivision, Mr. Catalino Pagdilao expressed his concerns as there was no advance warning before the antenna was constructed, no information on the impacts of such a structure in a mostly residential area, and the length of time from when the antenna was constructed to the scheduled public hearing.

Another resident of the Piga subdivision, Mr. Edwin Limtuatco and his wife, Mrs. Catalina Limtuatco, shared the same concerns as Mr. Pagdilao and also expressed concerns for their health since the antenna will be emitting radio frequencies 24 hours a day. Lengthy discussions pursued between the representatives of Docomo and the Limtuatcos regarding the impacts to the health of those who live in close proximity to cellular towers.

In general, the affected residents wanted to hear from a third party some assurances regarding radio frequencies emitted from the cellular antenna tower. We have requested of the applicant that any information to address concerns brought forth at the public hearing be submitted as a supplement to the application.

4. STAFF ANALYSIS: This application for a variance is pursuant to the requirements of E.O. 2001-36. By virtue of the Executive Order, the Applicant is allowed to secure a building permit to erect and operate an antenna not to exceed 100' feet. The Executive Order further affords Government Agencies, through the Guam Land Use Commission's application process, the opportunity to assess aspects of the project such as proper design and proof of acceptable structural integrity and that possible subsequent impact directly or indirectly resulting from such variance are appropriately addressed and mitigated or eliminated.

The applicant submitted the following justification in support of its request for a height variance:

That there are practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the Law: Docomo Pacific, Inc. seeks to improve its telecom infrastructure to provide quality services across the island of Guam, most especially in underserved areas with less robust signal coverage. The proposed tower location is critical to ensure the widest and best coverage. Guam enacted the Executive Order 2001-36 to allow Guam Telecommunications companies to develop competitive, safe and efficient mobile communication services. This variance request is consistent with the general purpose and intent of the law, and further, if not granted, will impose significant delays and logistical hardship, not least of which will be the necessity of selecting and inferior alternative site.

That there are exceptional circumstances or conditions applicable to the property or the intended use that do not apply generally to other properties in the same zone: the Company performed extensive radio frequency (RF) simulation and testing conducted at several locations, the results of which indicated that the site in question is ideal for improving coverage in the area, and also that alternative sites in the area were inferior from a coverage and/or logistical standpoint.

That the grant of variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or neighborhood in which the property is located: All equipment installed and maintained by the Company is licensed and regulated by the Federal Communications Commission (FCC), with regulations include operating frequencies, range, and power levels consistent with public safety and industry best practices. Further, the Company maintains a Comprehensive General Liability Insurance policy, which requires a minimum of \$1,000,000 liability policy for each site constructed. All sites are registered and recorded with the FCC.

That the grant of the variance will not be contrary to the objectives of any part of the master plan adopted by the Commission or Legislature: The Telecommunication site is being constructed to fulfill both the current and future demands of the Community for state-of-the-art coverage islandwide, a goal that is consistent with Executive Order 2001-36 enacted to benefit the people of Guam.

That, as to variances from the restrictions of §61504 [of the zoning law], the proposed building will substantially enhance the recreational, aesthetic or commercial value of the beach area upon which the building is to be constructed, and that such building will not interfere with or adversely affect the surrounding property owners' or publics' right to an untrammeled use of the beach and its natural beauty: The requested variance is not located near a beach.

As in any variance there are 5-criteria that must be addressed and therefore, we provide the following analysis:

That there are practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the Law: We have looked at 21GCA, Chapter 61, Article 4, § 61402, paragraph (b), Building and Structures Permitted above Height Limit. This section cites "Aerials, flagpoles, skylights, steeples, towers (emphasis added), fire or parapet walls, or other similar structures". However, because of the requirement to further comply with EO 2001-36, telecommunications towers must be subjected to the variance requirements. We feel that this is contradictory and therefore, the "DIFFICULTIES or UNNECESSARY HARDSHIP" lies in the requirement to comply with the EO despite the fact that the "TOWER" is an "EXEMPTED" structure per the Zoning Law. In addition,

GLUC Resolution No. 2008-02, further expounds on the allowance of wireless communications use; and because the zoning of the property whereby the tower is situated is zone "A", this variance must be subjected pursuant to Resolution 2008-02, paragraph 2 for the Commission's review.

That there are exceptional circumstances or conditions applicable to the property or the intended use that do not apply generally to other properties in the same zone: The circumstance or conditions applicable in this case is in the "PROPERTY" and the TELECOMMUNICATIONS USE". In the case of the property, this site chosen is the sole area whereby the tower is best located. The single underlying reason for the use of this property is that it is the only one that has the greatest elevation in the surrounding area; and therefore, is conducive for the use. In the case of the "TOWER USE", there is no other "USE" similar in the area. This is the first Telecommunications Tower and associated wireless accessory in the area.

That the grant of variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or neighborhood in which the property is located: The Federal Communications Commission (FCC) regulates the wireless emissions and frequencies whereby such emissions do not pose a safety and health hazard to people and other living creatures. Strict compliance to FCC standards and requirements must be adhered to by the operator, otherwise cellular operations could not be realized.

While we recognize the health concerns of the affected residents of the Piga Subdivision, we also note that there is a measure of improvement as emergency services will be able to utilize the connectivity this equipment provides to the immediate area.

That the grant of the variance will not be contrary to the objectives of any part of the master plan adopted by the Commission or Legislature: Our current laws including applicable Land Use Plans (circa 1966/1967) did not address the use of cellular telecommunications. The idea of cellular telecommunication was not even thought about back then when Comprehensive Plans, Land Use Plans, Community Plans and Zoning Ordinances were developed for the simple reason that this "cellular/wireless" communications was not the "technology" at the time not anticipated. Therefore, the "use" is not contrary to any Master Plan in effect. There is none that addresses "wireless-cellular" use and associated accessories.

We point out the fact that since the introduction and upsurge in usage of wireless communications, criteria has been implemented via an Executive Order (2001-36) which was in effect as of November 25, 2001. This EO, however, only addresses the physical location and allowable placement of cellular towers; and defers any specific operational characteristics such as, emissions, frequencies, safety, liability insurance requirements and so forth, to FCC compliance and oversight. GLUC Resolution No. 2008-02, supplements this EO with specific actions the Applicant must adhere to including Land Use Commission Review and approval.

That, as to variances from the restrictions of §61504 [of the zoning law], the proposed building will substantially enhance the recreational, aesthetic or commercial value of the beach area upon which the building is to be constructed, and that such building will not interfere with or adversely affect the surrounding property owners' or publics' right to an untrammeled use of the beach and its natural beauty:

This criteria is "NOT APPLICABLE" for the wireless telecommunications use. The site is not located near or on any public "Beach" area whereby it will affect, hinders, obstruct the ocean beach access for both private residents and the public at large.

Executive Order 2001-36 was promulgated for the purpose of supporting the development of wireless telecommunications systems in Guam; we have since seen a maturity in the cellular telecommunication industry. It is for this reason that the aforementioned executive order has been repealed and rescinded.

5. <u>CONCLUSION:</u> The ARC agencies who have officially responded have "no objections with conditions" as reflected in their position statement. The affected residents are mostly concerned of the impacts to their health, however, Executive Order 2001-36 and Guam Land Use Commission Resolution 2008-02 were applicable for this request and we must defer any specific operational characteristics such as, emissions, frequencies, safety, liability insurance requirements and so forth, to the FCC. Additional objections to the request as to construction of the tower prior to receiving a variance from the Guam Land Use Commission is noted, however, is somewhat negated by Executive Order 2001-36.

Based on the above preceding discussions, we find the criteria for the grant of variance for the requested use is justified. We further find that the application is complete and contains all requested information/data; and therefore, meets the requirements of the variance criteria as cited in the Zoning Law and Executive Order 2001-36.

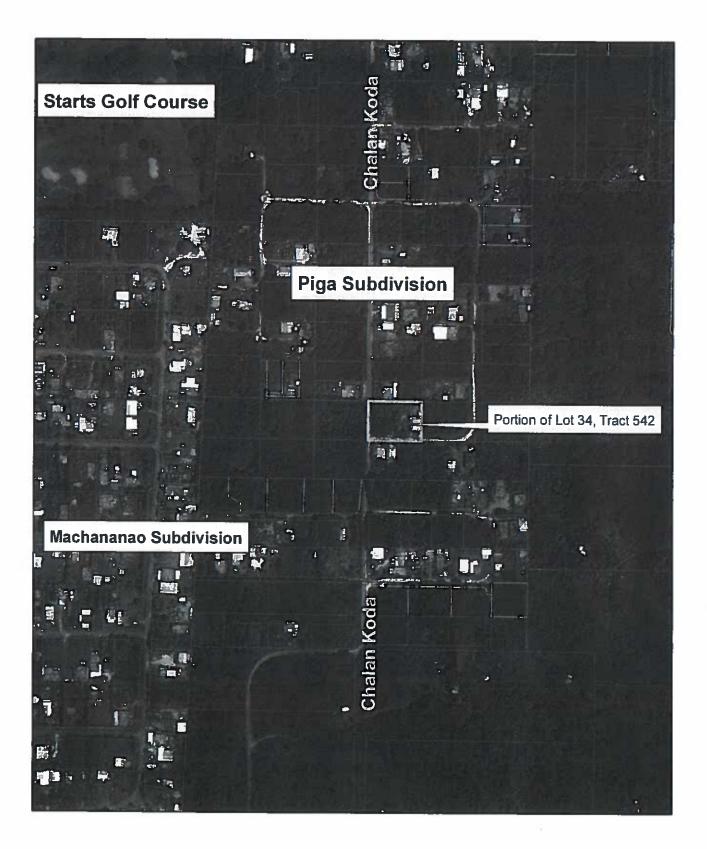
- 6. **RECOMMENDATION:** Recommend **APPROVAL WITH CONDITIONS** as follows:
 - A. The Applicant shall adhere to the ARC conditions and requirements as stipulated in their Official Position Statement; and
 - B. That the initial approval shall be limited to a two year term. The applicant shall appear before the Commission and provide a status report of its operations during the initial 2-year for consideration of any renewals.

Marvin Q Aguilar

Attachments

CASE PLANNER: Celine Cruz

Docomo Piga Site Portion of Lot 34, Tract 542 Dededo



NECE VED

March 7, 2017

Chairman, GLUC or Executive Secretary, GLUC Department of Land Management

Dear Chairman,

Mar 1 0 2017
Department of Land Management

Send to Case planner.

My name is Ramon V. Juanane, and my wife's name is Mary Jean D. Juanane. We are living in Chalan Koda, Dededo, Guam for almost 18 years.

We are writing to you to express our opposition to the recently installed Docomo Pacific Cell Phone Tower in our area. It was installed without the proper notice to the people, and with total disregard to the health hazard to all the residents living in that vicinity.

As a Drafsman and employed in the Civil Engineering consulting firm, I strongly believed that this is not the proper location for a Cell Phone Tower.

We do not want the children exposed to electromagnetic radiation, as these Cell Tower emissions are "dangerous to human health". We have learned that health studies and conclude that living near Cell Towers should be no closer than 1300 feet (1/4 mile) from residences.

We strongly need your immediate action to stop the operation of cell phone tower for the sake of one big community and not for the sake of one big company.

Signed by:

Ramon V. Juanane

Mary Jean D. Juanane

Resident of 944-1, Chalan Koda, Dededo

00h 06

January 30, 2017

Chairman, GLUC or Executive Secretary, GLUC Department of Land Management

Dear Chairman:

This letter is to oppose the rezoning and the building of telecommunication monopole tower on Lot 34, Tract 542 in the Municipality of Dededo. resident and homeowner, I oppose the construction due to health hazard (mainly radiation) that the tower will produce. I personally called Docomo concerning this matter. Docomo's response was that the radiation it emits was just like using a cellphone. Their response really bothered me. How can a tower be compared to a cellphone? The cellphone can be turned off anytime. Unlike the tower, it will be up and running 24 hours a day. There is really a big difference between the two items. Just imagine the enormous radiation that the tower will emit in our area. It will greatly affect the health of the adult and children alike. We also noticed that the permit to rezone was never posted or disclosed when the construction started. It was only through the construction workers that we became aware of the purpose of the construction. As a result, a petition was started and signed by our neighbors to which was submitted to Docomo on November 06, 2015. It was only then that the permit was posted and disclosed. It has been more than a year since we voiced out our concern to Docomo on a Now that we received the Department of Land Management letter dated January 13, 2017, it states that a public hearing is being held on January 31, 2017 to discuss Docomo's request for a Zone Variance for height to allow construction of 100ft telecommunication monopole tower on a said lot.

As a result of this letter, we have so many unanswered questions. For instance, how can a public hearing for rezoning and construction take place when in fact the tower has been constructed and completed? Why wasn't the public hearing held prior to the construction of the pole as mandated by law? Also, why was a construction permit approved and granted when a public hearing to rezone was mandated by law? It appears that there is a GLUC regulation that has been



violated. Why was there no formal educational awareness provided by Docomo to the residence concerning the tower? What is the assurance that there will be no health effects to the residents living within 500 feet of the tower? What more if living less than 500 feet from the tower?

In our opinion, the tower should have not been allowed and constructed at all. It also appears that the public hearing has lost its purpose as the pole is currently and completely erected in the said lot.

You may email your response directly to ec799xiarra@yahoo.com.

Signed by:

Edwin E. Limtuatco

Catalina A. Limtuatco

Resident of 946A-1, Chalan Koda, Dededo.

Street Address; 590 S. Marine Corps Drive Suite 733 ITC Building Tamuning, GU 96913

Mailing Address: P.O. Box 2950 Hagåtña, GU 96932

[2015-34]

Website:

ntio. elm quam.co/

E-mail Address: 🚱 🛮 dimdir 🕏 land guem gov

Telephone: 671-649-LAND (5263)

Facsimile: 671-649-5383





DIPÅTTAMENTON MINANEHAN TÅNO' (Department of Land Management) GUBETNAMENTON GUÄHAN (Government of Guam)



MICHAEL J.B. BORJA Director

DAVID V. CAMACHO Deputy Director

EDDIE BAZA CALVO Governor

RAY TENORIO Lieutenant Governor

January 13, 2017

Aquino Catalina S. & Manolito S. T542 L39 P.O. Box 9716 Tamuning, GU 96931

Dear Sir/Madam:

An application has been filed with the Guam Land Use Commission (GLUC) by:

The Applicant, Docomo Pacific Guam request for a Zone Variance for height to allow construction of a 100ft telecommunication monopole tower, on Lot 34, Tract 542 in the Municipality of Dededo, in an "A" (Agricultural) zone, under Application No. 2016-23.

For any **Zone Variance** requests, the Guam Land Use Commission is mandated by law to conduct a Public Hearing in the Municipal District where the property is located. Accordingly, a Public Hearing on this application is scheduled to be held:

PLACE:

Dededo Senior Center

DATE:

January 31, 2017, Tuesday

TIME:

6:00 p.m.

As a property owner identified within 500 feet of this proposed development, we invite you to attend this Public Hearing and participate in the review process and to express your opinion on this application. If you are unable to attend the Public Hearing, please submit written comments to our office on or before the scheduled Guam Land Use Commission which will be published on the Guam Daily Post and noted on the applicant's onsite sign. Our office is located on the third floor (room 304) of the ITC Building and written comments should be addressed to:

Chairman, GLUC or Executive Secretary, GLUC c/o Department of Land Management Land Planning Division P.O. Box 2950, Hagatna, Guam 96932

January 13, 2017
Public Hearing Notices for Residents
Docomo Pacific Guam – Application No. 2016-23
Page 2

Accordingly, a GLUC Hearing for this application will be advertised in the Guam Daily Post open ad, Government meeting and the website.

You may review the development application at our office or your Mayor's Office.

Thank you for your interest.

Si Yu'os Ma'ase,

MARVIN Q AGUILAF Guam Chief Planner October 26, 2015

Jonathan Kriegel, CEO DOCOMO PACIFIC, INC. 219 S. Marine Corps Drive, Ste. 201 Tamuning, Guam 96913

Dear Mr. Kriegel,

This letter is to address our concerns as residents of Chalan Koda, Machanao Dededo where your company is currently building a cell phone antenna tower. Hopefully, these will be addressed as soon as possible. As residents, our main concerns are our health. There are studies that cell phone towers can pose health hazards and cause adverse health effects especially to young children of constant exposure to electromagnetic radiation emitted by the towers. Based on our researched, a study in Australia had linked children living near TV and FM broadcast towers, which emit similar radiation to cell towers, developed leukemia at three times the rate of children living over seven miles away. A German study has found out that people living within a quarter mile are at risk of serious harm to their health because of the electromagnetic frequencies form cell phone towers. In addition, people living within 400 meters, cancer rates more than tripled. An Israeli study has found out that the risk of cancer quadrupled among people living within 350 meters (1,148 feet) and seven out of eight cancer victims were women living in the same area for many years. Other studies have found that levels of radiation emitted from cell phone towers can damage cell tissues and DNA, causing miscarriage, suppressing immune function and causing other health problems. These studies were not done overnight but years of studies. These are serious especially for most us living here for more than 20 years. Imagine the tower you are building is less than 20 feet from the three residences surrounding it.

In addition, studies have shown that cell phone towers located in residential neighborhoods have negative effects on local property values. House prices decreased by 5 to 10% in value. These are our homes that we built from ground up and plan to pass to our future generations so these are priceless.

We do understand that the intention is to provide better signal to the customers. However, the effects mentioned above outweigh the intended benefit. We ask that the tower be relocated where it would be far away from the residential area. Your consideration on this matter is greatly appreciated by the residents in this area. Please email ec799xlarra@yahoo.com for any response.

Sincerely,

Chalan Koda Residents

Attachments: Residents signatures (4)

11/06/15

	Print Name	Signature	Address
1	RAMON V. JUANANO	Ruguel	944-J Jallana St. Chaku Keda
2	NBELTE.IN	110	Meni 994- A Vallona 84.
3	ELVIRA J. ARAYA	2 Holley	944-I Jalloria St. Chalankora Marhanas, Dedeas
4	MEETAIRDO A ARAY	4	194-1 Jalleria St. Chalar-Kode Machanas Didedo anya chalon kedomechas
5	Allan TIMIC	anno	Declecto
6	Antonette Timo	arrita	1994-A Chalan (Coda St. Machanac Vied.
7	ANIN-TINCO		991-A CHALAN KODA, DEDEDO
8	Sheril Timo		994-A Chalan Kada. Dederco
	Wagdalena Im	ir Alet	994 A Chilar Kird- Ded-
	Mylene Timo		999 A Chalon Koda Dedede
11	Pegenallo H	egodio	
	PRENALI) B PASCHA		9946 Jalloria ST. Chalan Kuda
13	FERDINAND B POSL	2	994H Jallona ST. Chalan Kuda
14	MARLENE IS PASCUA	4	994H JAHORIA ST. Chulan Keda-
15	APNELP DIVACOUNT		GOOH JAI WELL ST CHALAN KEDA
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17	Fernino	Peill ron	Speil
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19	George Re-	ICS I	JALORIAN 994-B-CHATAN
	Jill B. R	tyes XX	994-13-CHANAND KUDA ST.
2	MARY JEAN I	LUANAND A	MACHANA 994-I Chalankoda St
)		9

Chalan Koda Dededo Residents

Print Name	Signature	Address
1 EDGARDO M.DRAC	RIZ DE	NO. 205 CACTUS LANE, CHUMN KA
2 Alicia R. O'Conn	a flocor	- 862 E CACTUS LANE, CHALAN KODA, Decle
3 Harry A Olama	#han	862 E CACTUS LAND CHALLEN KOOK Dedea
4 Edgardo A Delica	i Bothaly	, solven, or the even
5 Mariya 6 Delacme	July has	\$ 1200 Cooper Care, chalan kode Deded
6 Margaret & Dela cons	100	
7 Dominique Dela era _		
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15 JAIME CROSSECO	Dalt	1974 CACTYS LANE CASSELL KOKS
16 MARCH DEBTOR	paratill)	197 & CACTUS INSTE CHAINN KOPE
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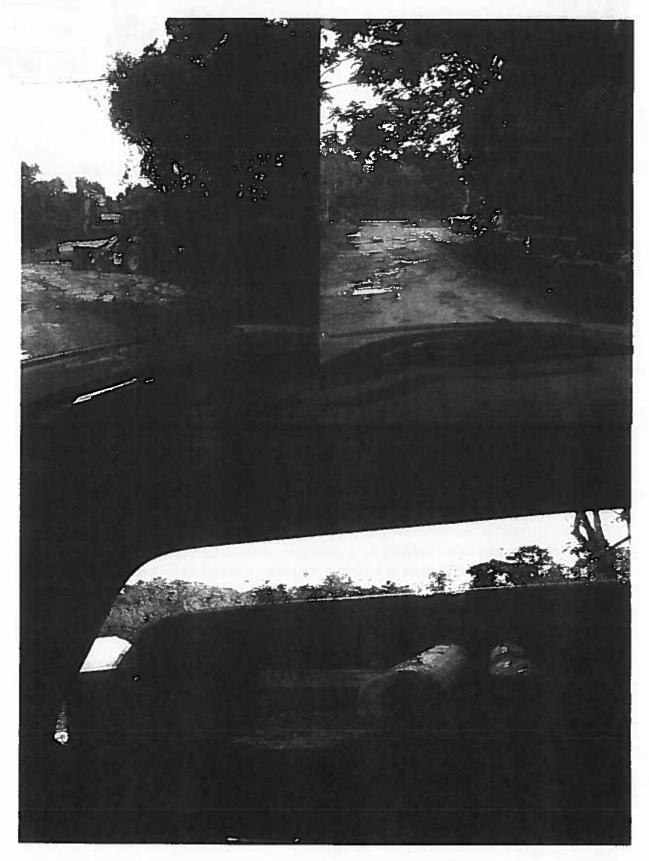
Chalan Koda Dededo Residents

		Address
1 Vicenie Castro	VictoCan	Dededo Chara Koda
2 Edwin limbras	to Estimpulate	1946 Decledo Chalan Koda
3 Catalina him	tuata Caffernia	Dededo Chalan Koda 946# Tededo Chalan Koda 12 Peledo Chalan Koda
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Chalan Koda Dededo Residents

Print Name	Signature	Address			
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2 YUSE SAGUZ	- 777	830 etta AU KODA	MA CELAUALAS	repend	
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Pictures were taken on 11/14/2015



May 11, 2016

TO: Chairman John Arroyo

Guam Land Use Commission

Planner Jeff Baker
Planning Division
Department of Land Management

FR: Wate Torres, Attorney-in-Fact for Calen Torres Coloma

162 Chalan Gualiek

Sagan Linahyan Subdivision As-Tumbo

Dededo, Guam 96929

Phone no. 969-8510

Subj: GLUC Application No. 2016-232

Objection to granting variance for DoCoMo on Lot 34, Tract 542, Dededo

My name is Wate Torres, I am the Attorney-in-Fact for Calen Torres Coloma, my daughter. My Special Power of Attorney is attached to this letter as Calen is on military deployment and is unable to make this Objection in person.

Calen is one of the owners of Lot 34, Tract 542, Dededo. Calen is the owner of a ¼ undivided interest along with her husband Ferdinand M. Coloma as joint tenants with rights of survivorship. Certificate of Title Number 136169 is attached to this letter proving their ownership interest.

I wish to register and record my objection to the Guam Land Use Commission to <u>NOT GRANT</u> DoCoMo a variance authorizing the installation of a monopole tower.

At no time did DoCoMo seek or obtain permission of the other lot owners to install a monopole tower. DoCoMo has to work something out with the other owners or remove the monopole. I hope and pray that I do not have to resort to legal action for resolution. Permission is hereby granted to the GLUC and the assigned Planner to release my contact information above to DoCoMo.

I am requesting personal notification of any meeting for pending action prior to any decision to be made by the GLUC.

00-11-16

Senseremente,

<u>vate</u> porres

Attorney-in-Fact for Owner Calen Torres Coloma

P. Colac 5/11/16 Lud Mm

SPECIAL POWER OF ATTORNEY

THIS IS A MILITARY POWER OF ATTORNEY PREPARED AND EXECUTED PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 1044B, BY A PERSON AUTHORIZED TO RECEIVE LEGAL ASSISTANCE FROM THE MILITARY SERVICES. FEDERAL LAW EXEMPTS A MILITARY POWER OF ATTORNEY FROM ANY REQUIREMENT OF FORM, SUBSTANCE, FORMALITY OR RECORDING THAT IS PROVIDED FOR POWERS OF ATTORNEY BY THE LAW OF ANY STATE, COMMONWEALTH, TERRITORY, DISTRICT, OR POSSESSION OF THE UNITED STATES. FEDERAL LAW SPECIFIES THAT A MILITARY POWER OF ATTORNEY SHALL BE GIVEN THE SAME LEGAL EFFECT AS A POWER OF ATTORNEY PREPARED AND EXECUTED IN ACCORDANCE WITH THE LAWS OF THE JURISDICTION WHERE IT IS PRESENTED.

KNOW ALL PERSONS, that I, CALEN TORRES COLOMA, a legal resident of GUAM and presently residing at PSC 76, Box 4648, APO, AP 96319 desiring to execute a SPECIAL POWER OF ATTORNEY, do hereby appoint Wate Torres whose address is 162 Chalan Gualiek Sagan Linahyan Subd, Astumbo, Dededo, Guam 96929 as my Attorney-in-Fact to act as follows, GRANTING unto said Attorney full power to:

Manage my property located at Lot 34, Tract 542, Security Title, Encumbrance Research, Estate No. 54120 Agricultural Subd. (Formerly Lot 10084-1-R1), Drawing No. 074-14. Said attorney is empowered to execute any and all documentation necessary to effectuate any and all business and legal matters regarding the state of the land and any practices required to ensure the property is cared for on behalf of myself. They may represent me in all business dealings and legal matters regarding the state of the property in question. Management shall extend to maintaining the property in a habitable condition and operating as a prudent administrator.

TERMINATION: This Power of Attorney shall become null and void the 21st day of March 2017 unless I should become incapacitated; in that case, it shall remain in effect until revoked by me.

Notwithstanding my insertion of a specific expiration date herein, if on the above specified expiration date I shall be, or have been, carried in a military status of "missing," "missing-in-action," or "prisoner of war," then this power of attorney shall automatically remain valid and in full effect until sixty (60) days after I have returned to United States Military control following termination of such status.

IN WITNESS WHEREOF, I have here unto set my hand on this 21st day of March 2016.

CALEN TORRES COLOMA

With the Armed Forces at Misawa AB

On this 21st day of March 2016, I, a paralegal, authorized the general powers of a Notary Public under the provisions of Title 10, United States Code, Section 1044a, certify that the person whose name is signed to this instrument is within the class defined by Title 10, United States Code, Section 1044, did personally appear before me and, after the contents of this instrument had been read and explained, did sign this instrument and acknowledge doing so freely and voluntarily for the uses, purposes, and considerations set forth above.

PATRICK HOERLE, SrA, MISAWA AB, USAF



CERTIFICATE OF TITLE



TERRITORY OF GUAM DEPARTMENT OF LAND MANAGEMENT



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Street Address: 590 S. Marine Corps Drive Suite 733 ITC Building Tamuning, GU 96913

> Mailing Address: P.O. Box 2950 Hagátña, GU 96932

Website: http://dim.guam.gov

E-mail Address: dlmdir@land.guam.gov

Telephone: 671-649-LAND (5263)

Facsimile: 671-649-5383





EDDIE BAZA CALVO

RAY TENORIO
Lieutenant Governor

Governor

DIPÅTTAMENTON MINANEHAN TÅNO' (Department of Land Management) GUBETNAMENTON GUÅHAN (Government of Guam)



MICHAEL J.B. BORJA Director

DAVID V. CAMACHO Deputy Director

June 14, 2017

MEMORANDUM

TO:

Guam Land Use Commission (GLUC) Members

FROM: Chairman, Application Review Committee (ARC)

SUBJECT: Summary of Position Statements by ARC Members

RE: Zone Variance Application – 2016-23

Listed below are the APPLICATION REVIEW COMMITTEE POSITION STATEMENTS as submitted:

PERMANENT VOTING MEMBERS

1. <u>DEPARTMENT OF LAND MANAGEMENT:</u>

- 1. The Applicant shall adhere to the ARC conditions and requirements as stipulated in their Official Position Statement; and
- 2. That the initial approval shall be limited to a two year term. The applicant shall appear before the Commission and provide a status report of its operations during the initial 2-year period. Subsequent requests to extend the Variance Permit shall be renewed for a term determined by the Commission at the time of the request.

2. **GUAM ENVIRONMENTAL PROTECTION AGENCY:**

No Position Statement has been received as of the date of this Memorandum of June 14, 2017.

3. DEPARTMENT OF AGRICULTURE:

Agriculture has reviewed the subject lot and request for a "Zone Variance" and finds that there are no major impacts to any agricultural activity and to any environmental issues regarding endangered species and habitat. However, our agency does recommend and require that proper mitigation measures are in place to prevent spillage of any industrial chemicals associated with any development activities. This is to protect our "Northern Aquifer" the major source of Guam's drinking water. To also aide in protecting our environment Agriculture encourages the land owner and developer to incorporate a landscaping plan that includes indigenous and/or

Continuation of Memorandum

Re: Summary of Position Statement - Application No. 2016-23

GLUC Hearing of June 22, 2017

Date of Preparation of this Memorandum: June 14, 2017

Page 2 of 4

fruit tree species planted on the site. These trees will help filter chemical pollutants and have the added benefits of windbreak protection, shading and an aesthetic component to enhance the area.

4. GUAM WATER WORKS AUTHORITY:

Given the information provided in the application and existing conditions observed in the field, the following is GWA's position on the zone variance application:

The applicant's request for a zone variance for height will not require an increase in water and wastewater services and there are no GWA utilities that will be impacted following the approval of this zone variance request. Therefore, GWA has no objection to this application request.

5. **GUAM POWER AUTHORITY**:

- A. Comments and Recommendations Concerning GPA requirements:
 - GPA has no objection, however customer is required to comply with the following pursuant to the National Electric Code, National Electric Safety Code and GPA's Service Rules and Regulations:
 - Coordinate overhead/underground power requirements with GPA Engineering for new structure.
 - Maintain minimum clearances as defined by the current edition of the National Electrical Safety Code and National Electrical Code.
 - Maintain adequate clearance between any structures and electrical utility easements in accordance with NESC and GPA requirements.
 - Developer/Owner shall provide necessary electrical utility easements to GPA prior to final connection.
 - Provide scheduling and magnitude of project power demand requirements for new loads.
 - All relocation costs for GPA's facilities, if necessary, is 100% chargeable to the applicant including but not limited to labor and materials.
 - 2. Primary distribution overhead and underground line extensions and GPA service connections must adhere to the guidelines outlined in the current issue of GPA's Service Rules and Regulations.
 - 3. A system impact assessment may be required to determine the effect of this facility on GPA's existing power facilities.
 - 4. All costs associated with the modification of GPA facilities shall be chargeable to the customer. This includes relocation costs, new installation costs and any required system upgrades.
- B. General Comments

Continuation of Memorandum

Re: Summary of Position Statement - Application No. 2016-23

GLUC Hearing of June 22, 2017

Date of Preparation of this Memorandum: June 14, 2017

Page 3 of 4

GPA has no objection to the request subject to the conditions cited above.

6. **DEPARTMENT OF PARKS AND RECREATION:**

We have reviewed the subject application and have consulted with FCC National PA for the collocation of wireless antennas. We have determined the subject undertaking will not affect historic properties. We have no objection of this Height Variance Application.

7. DEPARTMENT OF PUBLIC WORKS:

The Department of Public Works, (DPW) has completed its review of the subject application and has no objection to the request provided the following conditions be in place:

- To install sign for zone variance
- To house the generator for the longevity of the equipment
- Structure shall conform to Seismic Zone base on IBC Code 2009; and
- Plans must be signed by a registered structural engineer.

DPW recommends approval, subject to the comments reviewed by the Application Review Committee (ARC) with conditions that the building permit application must submit a complete set of drawings and must meet all the requirements in conformance with the latest building code edition applicable to the discipline applied to the above subject project.

8. BUREAU OF STATISTICS AND PLANS:

The Bureau of Statistics and Plans (Bureau) has completed its review of the subject application and provides the following comments and concerns.

1. Land Use. The North and Central Guam Land Use Plan (NCGLUP) identifies the project site as residential designation of Very Low Density (VLD), which states:

"This residential designation provides for a very low density (VLD) residential development in the area over the sole source Northern Aquifer. The purpose of this designation is to provide for residential development while protecting the long-term viability and health of the Northern Aquifer.VLD Residential denisities should generally be no more that one unit per acre."

The NCGLUP is approved as an element of the Guam Comprehensive Development Plan (GCDP). The Bureau finds that the proposed activity is not consistent with the North and Central Guam Land Use Plan.

2. Safety Precaution. According to Docomo Pacific Guamrepresentatives, the 100ft. monopole tower is approximately within 15-30 feet neighboring residential homes. The Bureau is concerned about the close proximity of

Continuation of Memorandum

Re: Summary of Position Statement - Application No. 2016-23

GLUC Hearing of June 22, 2017

Date of Preparation of this Memorandum: June 14, 2017

Page 4 of 4

the tower to the surrounding neighbors. The safety of residents in this area is of utmost concern, should a typhoon or natural disaster occur. The Bureau highly recommends the applicant implement safety measures to ensure the protection of the community in the event of tropical storms, typhoons, seismic activity and other catastrophic events.

3. Historic Preservation. The applicant must obtain concurrence from the Department of Parks and Recreation, Historic Preservation Division that the proposed development does not affect historic properties.

In light of the points presented above, the Bureau finds that the close proximity of the tower can significantly impact the surrounding neighbors in the event of a catastrophic event. We further find that the telecommunications tower is not compatible with the VLD category of the North and Central Guam Land Use Plan.

The Bureau also finds that EO 2001-36 circumvents due process for the applicant to comply with the GCDP. Nonetheless, the applicant should be required to comply with the aforementioned conditions and any applicable local and federal statutes.

EX-OFFICIO MEMBERS

9. <u>DEPARTMENT OF PUBLIC HEALTH and SOCIAL SERVICES:</u>
No Position Statement has been received as of the date of this Memorandum of June 14, 2017.

10. GUAM FIRE DEPARTMENT:

No Position Statement has been received as of the date of this Memorandum of June 14, 2017.

11. GUAM ECONOMIC DEVELOPMENT AUTHORITY:

No Position Statement has been received as of the date of this Memorandum of June 14, 2017.

12. GUAM PUBLIC SCHOOL SYSTEM:

No Position Statement has been received as of the date of this Memorandum of June 14, 2017.

13. DEPARTMENT OF CHAMORRO AFFAIRS:

No Position Statement has been received as of the date of this Memorandum of June 14, 2017.

Marvin Q. Aguilar Chairman, ARC

Case Planner: Celine Cruz



GUAM POWER AUTHORITY

ATURIDÅT ILEKTRESEDÅT GUAHAN P.O.BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

May 27, 2016

MEMORANDUM

To:

Chairman, Guam Land Use Commission

Executive Secretary, Guam Land Use Commission

From:

General Manager

Subject:

Lot 34, Tract 542, Municipality of Dededo, (Docomo Pacific-Guam); Zone Variance

(Height Variance) Application for a Telecommunications 100ft. Monopole Tower.

Application No. 2016-23

Guam Power Authority has reviewed the application described above and submits the following position statement:

A. Comments and Recommendations Concerning GPA requirements:

- GPA has no objection, however customer is required to comply with the following pursuant to the National Electric Code, National Electric Safety Code and GPA's Service Rules and Regulations:
 - Coordinate overhead/underground power requirements with GPA Engineering for new structures
 - Maintain minimum clearances as defined by the current edition of the National Electrical Safety Code and National Electrical Code.
 - Maintain adequate clearance between any structures and electric utility easements in accordance with NESC and GPA requirements.
 - Developer/Owner shall provide necessary electric utility easements to GPA prior to final connection.
 - Provide scheduling and magnitude of project power demand requirements for new loads.
 - All relocation costs for GPA's facilities, if necessary, is 100% chargeable to the applicant including but not limited to labor and materials.
- Primary distribution overhead and underground line extensions and GPA service connections must adhere to the guidelines outlined in the current issue of GPA's Service Rules and Regulations.
- A system impact assessment may be required to determine the effect of this facility on GPA's
 existing power facilities.
- 4. All costs associated with the modification of GPA facilities shall be chargeable to the customer. This includes relocation costs, new installation costs and any required system upgrades.

B. General Comments

GPA has no objection to the request subject to the conditions cited above.

JOHN M. BENAVENTE, P.E

ASG/arp

Ca/

INFRASTRUCTURE CERTIFICATION FORM

Agency Certifying: Guam Power Authority

Applicant: Docomo Pacific-Guam Location: Lot 34, Tract 542, Dededo Type of Application: Height Variance GLUC/GSPC Application No. 2016-23

Brief Project Description:

For a Telecommunications 100ft. Monopole Tower.

For the purposes of this Certification, GOVERNMENT SERVICES, FACILITIES, and INFRASTRUCTURE include, but are not limited to: power lines poles and facilities; water lines, pumps and facilities; sewer and liquid waste disposal; storm water disposal; solid waste disposal; telephone lines and facilities; schools; health facilities; police and fire fighting service and facilities; roads; traffic and street lights; parks and recreational activities.

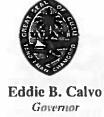
1.	I hereby certify that the INFRASTRUCTURE a Yes [re currently AVAILAB			project:		
2.	. If the answer to #1 above is YES, then: I hereby certify that the required GOVERNMENT SERVICES, FACILITIES and INFRASTRUCTURE are currently ADEQUATE to support this project:						
	Yes [□ No					
3.	If the required GOVER place are NOT AVAIL services, facilities and is are currently available a	ABLE or they are AVA nfrastructure that are ne	ILABLE, BU'll eded, the estima	T NOT ADEQUATE ated cost thereof and v	, itemize the whether funds		
Service	s, Facilities and	Cost of Upgrades	Funds	Date Available	Funds		
Infrastr	ucture Needed		Available		Identified		
Please s	see comments below						

General Manager

6-6-16

Based on a preliminary inspection of the site, the electrical facilities may require upgrading to meet the demand of the proposed project. A system impact assessment maybe required to determine the effect of this facility on GPA's existing power distribution system. The applicant will be responsible for the cost of any required system upgrade.

I hereby certify that the foregoing is true and correct to the best of my knowledge.



Ray Tenorio

Department of Parks and Recreation Government of Guam

490 Chalan Palasyo, Agana Heights, Guam 96910 Director's Office: (671) 475-6296/7; Fax (671) 477-0997 Parks Division: (671) 475-6288/9

Guam Historic Resources Division: (671) 475-6294/5

Facsimile: (671) 477-2822



Robert S. Lizama

Director

William N. Reyes
Deputy Director

In reply refer to: RC 2016-0516

July 18, 2016

Memorandum

To:

Executive Secretary, Guam Land Use Commission

From:

Director, Department of Parks and Recreation

Subject:

Application No. Zy 2016-23: Height Variance Application for Docomo Pacific-

Guam, Lot 34, Tract 542, Dededo, Guam

We reviewed the subject application and have consulted with FCC National PA for the collocation of wireless antennas. We have determined the subject undertaking will not affect historic properties. We have no objection to the approval of this Height Variance Application.

Should you have any questions, please do not hesitate to call us.

Sincerely,

Robert S. Lizania

Director



The Honorable
EDDIE BAZA CALVO
Governor

The Honorable
RAY S. TENORIO
Lieutenant Governor

MS7/18



DIPATTAMENTON CHECHO PUPBLEKO
GLENN LEON GUERRERO
Director
FELIX C. BENAVENTE
Deputy Director

July 7, 2016

MEMORANDUM

TO:

Director, Department of Land Management

FROM:

Director

SUBJECT:

Zone Variance for Telecommunication Monopole Tower

Position Statement No. 2016 -23 Lot # 34, Tract No.542, Yigo

Buenas yan Hafa Adai!

The applicant, Docomo Pacific Guam is requesting a zone variance for the above subject position statement. The site is along Piga site and within the Municipality of Dededo. The intent of installing this telecommunication is to improve the communication line and provide quality services on the designated site.

The Department of Public Works, (DPW) has completed its review of the subject application and has no objection to the requests provided the following conditions be in place:

- to install sign for zone variance
- to house the generator for the longevity of the equipment
- structure shall conform to Seismic Zone base on IBC Code 2009; and
- plans must be signed by a registered structural engineer.

DPW recommends approval, subject to the comments reviewed by the Application Review Committee (ARC) with conditions that the building permit application must submit a complete set of drawings and must meets all the requirements in conformance with the latest building code edition applicable to the discipline applied to the above subject project.

Should you have any questions, please contact Mr. John F. Calanayan, Acting Engineer in Charge or Maryrose M. Wilson, Engineer III in the Division of Capital Improvement Projects (CIP) at 646-4389/3224.

Dangkulu na Si Yu'os Ma'ase!

GLENN LEON GUERREO

Eddie Baza Calvo Governor of Guam

Ray Tenorio

Lieutenant Governor





Government of Guam

P.O. Box 2950 Hagåtña, Guam 96932 Tel: (671) 472-4201/3

Fax: (671) 477-1812

Director James T. McDonald Deputy Director

William M. Castro

JUL n 1 2016

MEMORANDUM

To:

Chairman, Guam Land Use Commission

Via:

Executive Secretary, Department of Land Management

From:

Director, Bureau of Statistics and Plans

Subject:

Position Statement on Application No. 2016-23

Applicant: Docomo Pacific Guam Location: Dededo, Lot 34, Tract 542

Purpose: 100ft. Telecommunications Monopole Tower

Hafa Adai! The applicant, Docomo Pacific Guam requests a zone variance on Lot 34, Tract 542in the municipality of Dededo. In accordance to Executive Order (EO) 2001-36, Docomo has installed a 100 foot telecommunications monopole tower on a portion of the property, approximately 2,414 square feet. Located in an "A" (Rural) zone, the subject lot can be accessed through Chalan Koka just off of Route 28. The property directly borders residential homes and is the primary land use in the area.

A telecommunications antenna site agreement indicates that the property is leased to Docomo Pacific Guam by Adolfo G. Balmeo (Landlord) for a term of twenty-five (25) years. Docomo Pacific Guam seeks to improve its telecommunication infrastructure in order to provide services throughout the island including underserved areas with less signal coverage.

The Bureau of Statistics and Plans (Bureau) has completed its review of the application and provides the following comments and concerns.

1. Land Use. The North and Central Guam Land Use Plan (NCGLUP) identifies the project site in a residential designation of Very Low Density (VLD), which states:

"This residential designation provides for very low density (VLD) residential development in the area over the sole source Northern Aquifer. The purpose of this designation is to provide for residential development while protecting the long-term viability and health of BSP Position Statement ARC 2016-23 Docomo Pacific Page 2 of 2

the Northern Aquifer. VLD Residential densities should generally be no more than one unit per acre."

The NCGLUP is approved as an element of the Guam Comprehensive Development Plan (GCDP). The Bureau finds that the proposed activity is not consistent with the North and Central Guam Land Use Plan.

- 2. Safety Precaution. According to Docomo Pacific Guam representatives, the 100ft. monopole tower is approximately within 15-30 feet neighboring residential homes. The Bureau is concerned about the close proximity of the tower to the surrounding neighbors. The safety of residents in this this area is of utmost concern, should a typhoon or natural disaster occur. The Bureau highly recommends the applicant to implement safety measures to ensure the protection of the community in the event of tropical storms, typhoons, seismic activity and other catastrophic events.
- 3. **Historic Preservation:** The applicant must obtain concurrence from the Department of Parks and Recreation, Historic Preservation Division that the proposed development does not affect historic properties.

In light of the points presented above, the Bureau finds that the close proximity of the tower can significantly impact the surrounding neighbors in the event of a catastrophic event. We further find that the telecommunications tower is not compatible with the VLD category of the North and Central Guam Land Use Plan.

The Bureau also finds that EO 2001-36 circumvents due process for the applicant to comply with the GCDP. Nonetheless, the applicant should be required to comply with the aforementioned conditions and any applicable local and federal statutes.

As government officials, it is our primary responsibility to ensure that the construction and operations of this proposed endeavor are in a manner designed to protect the public health, safety, and to promote the public welfare and convenience. We also encourage the applicant to protect Guam's natural resources and to ensure they are used in a sustainable manner. Si Yu'us Ma'ase'.

WILLIAM M. CASTRO

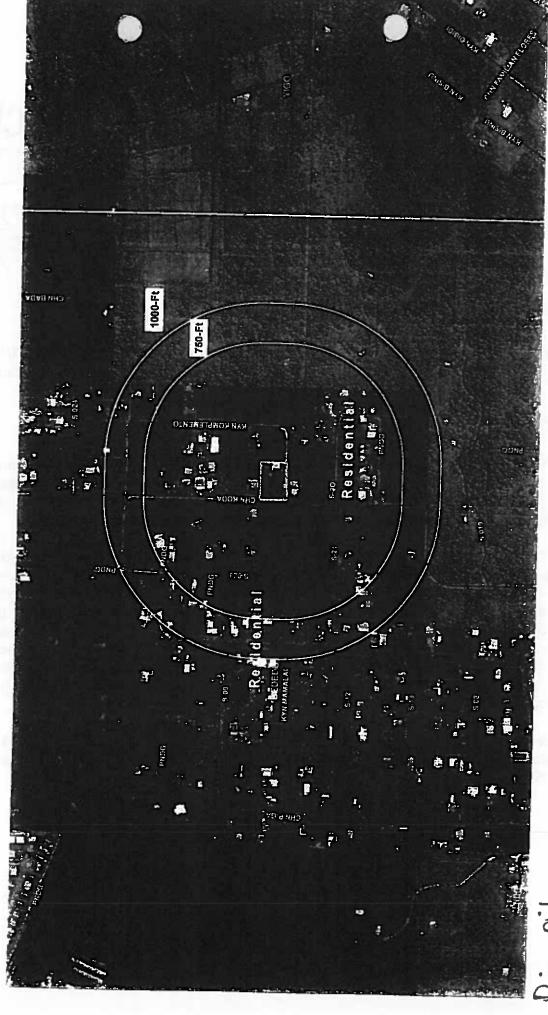
cc: GEPA

DOAG DPR

DPW

GPA

GWA



Piga Sife



GUAM WATERWORKS AUTHORITY

Gloria B. Nelson Public Service Building 688 Route 15, Mangilao, Guam 96913

MEMORANDUM

June 13, 2016

TO:

Director, Department of Land Management

FROM:

Miguel C. Bordallo, P.E., General Manager

SUBJECT:

Position Statement on Zone Variance Application No. 2016-

23 on Lot No. 34-1-1, Tract No. 542, in an "A" (Agricultural)

Zone, in the Municipality of Dededo.

APPLICANT(S):

Docomo Pacific Guam

The Guam Waterworks Authority (GWA) has reviewed the applicant's request for a zone variance for height for a permitted 100-foot telecommunication monopole tower on Lot No. 34-1-1, Tract No. 542, in an "A" (Agricultural) Zone, in the Municipality of Dededo.

This memorandum shall serve as GWA's position statement to the above zone variance request related to availability of water and sewer infrastructures to serve the above subject lot. This position statement shall not be construed as notice that water and sewer systems have the capabilities to accommodate the proposed development including fire flow without on-site or off-site improvements. Any extension of the water and sewer systems and/or capacity upgrades required to serve property shall be subject to the rules and regulations of GWA. Any required extension to the existing facilities to serve the subject properties shall be at expense of the applicant.

Given the information provided in the application and field observations, the following comment is GWA's position in favor of the approval of this zone variance application:

Page 2
GWA Position Statement
ARC Application No. 2016-23
Applicant(s): Docomo Pacific Guam

The applicant's request for a zone variance for height will not require an increase in water and wastewater services and there are no GWA utilities that will be impacted following the approval of this zone variance request. Therefore, GWA has no objection to this application request.

This GWA Position Statement shall remain valid for 365 calendar days from the date of this response. Please contact the GWA Engineering Division regarding water and sewer system improvement design and construction standards and procedures. For additional information please contact Mauryn McDonald, P.E., Permits and New Area Development Supervisor, at 300-6054.



Ray Tenorio

Lt. Governor

Director's Office Agricultural Development Services Plant Nursery Aquatic & Wildlife Resources Forestry & Soil Resources Plant Inspection Station Animal Health Department of Lord Management 300-7970 / 7969 / 7966 Time 1 Intil 2 300-7973 / 7972 / 7967 Matthew L.G. Sablan 735-3955/56; Fax 734-6570 Director 300-7975/6

Jessie B. Palican Deputy Director

June 30, 2016 Memorandum

To:

Director, Department of Land Management

Attn:

Executive Secretary, Guam Land Use Commission and Guam Seashore

Department of Agriculti DEPENDED Dipattamenton Agrikottura

475-1426/27; Fax 477-9487

300-7965 Fax 734-6569

Protection Commission

From:

Director of Agriculture

Subject:

"Agricultural & Environmental Impact Statement" for a "Zone Varience request in an "Agricultural Zone" on Lot 34 Tract 542 located on Chalan Koda in the Municipality of Dededo (Docomo Pacific Guam c/o Adolfo

Bolmeo)

Agriculture has reviewed the subject lot and request for a "Zone Varience" and finds that there are no major impacts to any agricultural activity and to any environmental issues regarding endangered species and habitat. However our agency does recommend and require that proper mitigation measures are in place to prevent spillage of any industrial chemicals associated with any development activities. This is to protect our "Northern Aquifer" the major source of Guam's drinking water. To also aide in protecting our environment Agriculture encourages the land owner and developer to incorporate a landscaping plan that includes indigenous and/or fruit tree species planted on the site. These trees will help filter chemical pollutants and have the added benefits of windbreak protection, shading and an aesthetic component to enhance the area.

Please contact our **Agricultural Development Services & Forestry** divisions here at the agency for further assistance and guidance at 300-7972 & 7976 respectively. Our Forestry division grows and maintains these native tree species should you choose to incorporate them into the project. Contact their office for assistance and consultation at 300-7976. Please be aware that the increased loss of Guam's native habitat contributes to a diminished capacity to sustain and support a healthy island community.

It is vital that all land developers take a proactive step in preventing and causing this loss. To fully benefit and see these eco-friendly practices being used visit our **Department of Agriculture Organic and Environmental Demonstration Farm**.

For questions or concerns regarding Agriculture's position please contact our office at 300-7973. Thank you in this regard.

MATTHEW L.G. SABLAN

Director